

# **EXHIBIT 4**



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TRANSCRIPT of the deposition of the  
witness, called for Oral Examination in the  
above-captioned matter, said deposition being taken by  
and before CHARLENE FRIEDMAN, a Notary Public and  
Certified Court Reporter of the State of New Jersey, a  
Registered Professional Reporter, and a Certified  
Realtime Reporter, via video teleconference, by Zoom, on  
October 21, 2022, commencing at approximately 9:58 in  
the morning, Eastern Standard Time.

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1       A P P E A R A N C E S:

2

3

4       TARTER, KRINSKY & DROGAN, LLP  
1350 Broadway  
5       New York, New York 10018  
(212) 216-8000  
6       BY:   MARK BERKOWITZ, ESQ.  
            CHANDLER STURM, ESQ.  
7       Attorneys for Plaintiffs

8

9

10       GLACIER LAW, LLP  
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12       (206) 397-8633  
BY:   ROBIN CHENG, ESQ.  
13       Attorneys for Defendant

14

15

16       ALSO PRESENT:   YIYI LIU

17

18                               \*   \*   \*   \*   \*

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## I N D E X

WITNESS NAME	PAGE
PAUL HATCH	
By Mr. Cheng	7

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## E X H I B I T S

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Direction to witness not to answer

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Line

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None

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9

Request for production of documents

10

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Line

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None

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Questions marked

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Page

Line

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None

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1 CERTIFIED SHORTHAND REPORTER: My  
2 name is Charlene Friedman, a Certified  
3 Shorthand Reporter and Notary Public of the  
4 State of New Jersey. This deposition is  
5 being held via videoconference equipment.

6 The witness and reporter are not in  
7 the same room. The witness will be sworn in  
8 remotely, pursuant to agreement of all  
9 parties. The parties stipulate that the  
10 testimony is being given as if the witness  
11 was sworn in person.

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1 P A U L H A T C H,

2 called as a witness, having been first duly  
3 sworn according to law, testifies as follows:

4

5 EXAMINATION BY MR. CHENG:

6 Q Good morning, Mr. Hatch.

7 Thank you for attending this  
8 deposition.

9 A Good morning.

10 Q My name is Robin Cheng, and I'll be  
11 conducting this deposition. I'll be asking  
12 questions related to the case in front of the  
13 Northern District of Illinois, Case No.  
14 120-cv-04806.

15 Are you familiar with that case?

16 A Yes, I am.

17 Q So is there any reason that you  
18 could not testify honestly or confidently or  
19 competently?

20 A No.

21 Q Did you take any drugs or  
22 medication, or do you have any mental illness  
23 that would prevent you from testifying  
24 honestly?

25 A No.



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1           Q    Okay. Mr. Hatch, how many expert  
2           witness reports did you provide in this case?

3           A    In this part of the case, I  
4           provided one expert report, an initial report  
5           plus two rebuttals.

6                   I should also, if I may, point out,  
7           I have printouts in front of me here, I just  
8           want you to know now, that are unmarked of  
9           all three documents.

10          Q    All three documents?

11          A    Yes.

12          Q    Did you provide any other reports  
13          in this case?

14          A    Here in this case I provided  
15          reports as well, and -- yes, that were of a  
16          similar matter.

17          Q    How many reports did you produce  
18          previously before the three expert witness  
19          reports that you just mentioned?

20          A    There was a matching three that was  
21          also an initial report and two rebuttal  
22          reports, and those were provided in 2001.

23          Q    Did you provide any reports in  
24          response -- 2001, you said?

25          A    I believe so, yes. That's 2001.

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1 Q 2001 was 20 years ago.

2 A Oh, I'm sorry. 2021.

3 Q 2021?

4 A Yes.

5 Q Did you provide any report in 2020?

6 A I don't think so. I think the  
7 first reports were in '21.

8 Q Let's -- so first, I will ask you a  
9 few questions regarding your, you know, past  
10 experience.

11 So Mr. Hatch, where do you live?

12 A I live in Chicago.

13 Q In Chicago.

14 And what's your highest education?

15 A Currently, I'm doing a Ph.D., but  
16 prior to that, I had a -- I studied  
17 industrial design. That was my  
18 undergraduate.

19 Q And from where?

20 A Northumbria University.

21 Q In which country?

22 A In the U.K.

23 Q In the U.K.

24 And how long did you study for  
25 that?

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1           A     That was -- it was -- well, I guess  
2     five years. It was a four-year course, but I  
3     took a one-year sabbatical.

4           Q     And that is equivalent of a  
5     Master's degree in the United States or --

6           A     I'm sorry, no. It's an  
7     undergraduate degree, a Bachelor's.

8           Q     So that's a Bachelor's degree?

9           A     Yes.

10          Q     Did you -- after completing that  
11     degree, did you pursue any further education?

12          A     Not until my Ph.D.

13          Q     And which Ph.D. program are you --  
14     are you involved in?

15          A     It's called Learning Sciences.

16          Q     And which university?

17          A     It's at the University of Illinois  
18     at Chicago.

19          Q     Have you passed your qualification  
20     yet?

21                MR. BERKOWITZ: Objection to the  
22     form.

23          A     Do you mean in the Ph.D.?

24          Q     For the Ph.D. program, yes.

25          A     I'm halfway through the Ph.D. So

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1 I've passed several things so far.

2 Q That's great.

3 And before the Learning Science  
4 program — is that the title of the Ph.D.  
5 program or what does the program involve?

6 A Yes, that is the title. It's  
7 called the Learning Sciences.

8 It's a multidisciplinary course  
9 that is based on psychology, technology and  
10 learning. So it's related to education.

11 Q It's related to education.

12 Is there any portion of the program  
13 dedicated to industrial design?

14 A Not specifically.

15 Q And have you served as an expert  
16 witness in similar cases before?

17 A Yes, I have.

18 Q How many?

19 A I have provided testimony. I think  
20 it's 14, possibly 15 times.

21 Q How many cases did you provide —  
22 in how many cases did you provide this 14 to  
23 15 testimony?

24 A So, I think that would be 11 or 12  
25 cases in which I've been deposed.

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1           Q    Have you ever served as an expert  
2   witness at trial?

3           A    Yes, I have.

4           Q    How many times?

5           A    That would be three times.   The  
6   three trials included a Jams hearing, I think  
7   it's called.

8           Q    And within that 11 to 12 cases,  
9   what type of cases or what type of products  
10   do those cases involve?

11          A    A number of consumer and commercial  
12   manmade products, quite a range of things,  
13   based on my experience as an industrial  
14   designer.

15          Q    Can you give me some examples?

16          A    One was regarding some  
17   microphones --

18               (Brief pause in proceedings.)

19          A    One previous case that I provided  
20   testimony for was regarding microphones,  
21   which were Array microphones.

22          Q    And you mentioned microphone Array?

23          A    Array.   It's a particular type of  
24   microphone.

25          Q    What other types of consumer

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1       electronic products have you -- have you  
2       testified for?

3           A     The -- there was a case regarding  
4       power tools. I guess that falls in that  
5       category as well.

6                   Also, a case regarding personal  
7       care equipment, hair shaving.

8           Q     Anything related to electronic  
9       vehicles or traditional conventional  
10      vehicles?

11          A     I've got experience working in that  
12      area, but I think not testifying in  
13      infringement in that area.

14          Q     When you say that you have  
15      experience working in that area, what  
16      experience are you referring to?

17          A     I worked as an industrial designer  
18      at a consultancy for -- well, as an  
19      industrial designer for over 25 years, mostly  
20      at a consultancy.

21                   During that time, I designed a lot  
22      of consumer products, which included, for  
23      instance, a Segway.

24                   There was a certain type of Segway  
25      that I think was related to this particular

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1 case.

2 Q I'm not familiar with Segway.

3 Can you tell me more about that  
4 product, Segway?

5 A Yes, sure.

6 The Segway product came out at  
7 around 2005, I think, approximately. And the  
8 invention allowed us, like a hoverboard, to  
9 stand on it and use it as a mobility device.

10 The Segways are different from the  
11 hoverboard. It also has a stand going up to  
12 a handlebar that the person could then hold,  
13 but it used a very, very similar technology.

14 Q How many wheels did the Segway  
15 have?

16 A Two wheels.

17 Q Two wheels.

18 And is there any connection portion  
19 between the two wheels?

20 MR. BERKOWITZ: Objection to form.

21 A On the Segways, it did have a -- it  
22 has the portion between the wheels, yes, that  
23 the user would stand on.

24 Q That the user would stand on.

25 And did you design the industrial

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1       portion of that product or did you design --  
2       what portion of that product did you focus  
3       your design on?

4           A     So the Segways were designed as  
5       commercial products or personal vehicles  
6       launched, I guess, before I started working  
7       on the version I did.

8                   And my company was requested to  
9       design a version of that based on that  
10      technology that would change the industrial  
11      design, that is, the look and feel, the  
12      styling towards a particular use and a  
13      particular demographic.

14           Q     And what would that demographic be?

15           A     Without divulging any confidential  
16      information, it was for a particular sport  
17      that this would be used in and the  
18      demographic being the people who do the  
19      sport.

20                   And it was seen that the Segway  
21      would be a very good -- a very good  
22      technology to use that. However, I would  
23      need some certain changes to make it  
24      appropriate for that particular application.

25           Q     And for the eleven trial cases that



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1       you testified in, are they all design patent  
2       infringement cases?

3           A     They are infringement -- I'm sorry,  
4       they are intellectual property cases  
5       involving utility patents and design patents.

6           Q     Were you involved in utility  
7       patent -- so, how many of them involved  
8       utility patents and how many of them involved  
9       design patents?

10          A     I don't know the numbers off the  
11       top of my head, but I think half -- about  
12       half or maybe slightly more than half  
13       involved design patents.

14          Q     And the -- sorry, go ahead.

15          A     And the others involved utility  
16       patents. Some involved both.

17          Q     Some involved both.

18                So you're saying you're about five  
19       to six cases that you -- where to which you  
20       served as an expert witness involving design  
21       patent issues?

22          A     Approximately that number for how  
23       many I have provided deposition for.

24                I've also worked on some other  
25       design patent cases that I've only provided

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1 analysis and reports to support the  
2 particular case, but it didn't necessarily go  
3 to deposition.

4 Q And how many of those cases in  
5 which that you served analysis but not  
6 deposition?

7 A Off the top of my head, I'm not  
8 sure. I would say a few, which would be  
9 several, I guess. Three to five, maybe more.

10 Q Do you know the outcome of those  
11 cases, the five to six cases of design patent  
12 that you served as being deposed, that you  
13 were deposed in those cases and the three to  
14 five cases that you provided analysis but you  
15 were not deposed in those cases?

16 MR. BERKOWITZ: Objection to the  
17 form, vague, compound.

18 A I know that some of the cases,  
19 certainly the majority of the cases I worked  
20 on had a positive outcome. Maybe it was  
21 settled before they went to court.

22 But I -- I haven't followed up to  
23 know about how all of my cases ended.

24 Q Is there any case that your  
25 analysis was -- are there any cases that your

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1 analysis was rejected by the court for the  
2 infringement analysis?

3 MR. BERKOWITZ: Objection to form.

4 A I'm not very sure about what may  
5 have happened with some of my testimony  
6 after -- afterwards, but I -- I'm not aware  
7 of, you know, a successful Daubert motion,  
8 that is, for instance, I think I would be  
9 aware if there was a successful Daubert  
10 motion to block me as an expert witness.

11 Q I guess that's what I was asking.

12 What I meant is, was there any  
13 analysis that you provided that eventually  
14 was not -- was not -- let me rephrase it.

15 Is there any analysis to which you  
16 provided your opinions were not -- were not  
17 taken by the court, meaning the court sided  
18 with the other party and considered, although  
19 you provided your expert report, the position  
20 is -- the positions were not taken by the  
21 court?

22 MR. BERKOWITZ: Objection to form.

23 A Yeah, I don't entirely understand  
24 the question, but I --

25 Q Let me -- let me rephrase it.

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1                   If you provided your opinion, were  
2           they all considered by the court?

3                   MR. BERKOWITZ: Objection to form.

4                   A     I believe all of the reports that  
5           I've provided were considered and I have not  
6           had a report struck, if that's what your  
7           question is.

8                   Q     And in those cases, did the court  
9           all rule in your client's favor or did they  
10          side with the other party?

11                  MR. BERKOWITZ: Objection to the  
12          form. Asked and answered.

13                  You can answer.

14                  A     Just to clarify, when you say in  
15          those cases --

16                  Q     In those cases you provided your  
17          analysis and testified as witnesses.

18                  MR. BERKOWITZ: Same objection.

19                  A     Yes, sorry.

20                  Can you either repeat or rephrase  
21          the question?

22                  Q     Sure.

23                  In those cases that you provided  
24          your analysis and you served as an expert  
25          witness, did the court all rule in your

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1 client's favor or did they side with the  
2 other party?

3 MR. BERKOWITZ: Objection to the  
4 form. Asked and answered.

5 A I'm not sure. I know that in -- I  
6 believe in the majority of the cases it has  
7 ended up in the favor of -- or in my favor,  
8 so to speak, but I really haven't kept track  
9 of all the cases.

10 Q So when you say the majority of the  
11 cases, the rest of the cases, do you know  
12 that the court ruled against your client or  
13 you just don't know about the outcome of the  
14 cases?

15 A I believe there's one or two --  
16 there's certainly one I know of that didn't  
17 go in favor of my client, but there's  
18 several -- I guess I really didn't keep tabs  
19 on to know whether it went one way or the  
20 other -- or another.

21 Q And for that one case that didn't  
22 go in favor of your client, do you know the  
23 case caption or the case number?

24 A Yes. Specifically, that's one that  
25 went to trial.

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1 I don't know the case number, but I  
2 do have it in my appendix.

3 The case is Clearone versus Shure.

4 Q Okay. Thank you.

5 Mr. Hatch, who approached you  
6 initially regarding this case?

7 MR. BERKOWITZ: Objection to the  
8 form.

9 Q Who approached you initially  
10 regarding providing opinions in this case?

11 A In this part of the case, the  
12 attorneys present contacted me.

13 Q Which portion are you referring to?

14 A I'm sorry, this year, the case that  
15 we're looking at this year.

16 Q Oh, this year.

17 For the entire case, who approached  
18 you and asked whether or not you can provide  
19 your opinion in this case?

20 A I don't actually recall, but it  
21 would very likely have been one of the  
22 attorneys that were previously involved on  
23 this case in 2021.

24 Q And you don't remember the name of  
25 that attorney?

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1           A     I don't right now, no.

2           Q     Do you remember which law firm that  
3 attorney worked for?

4           A     Sorry. Off the top of my head, I  
5 don't know. I've not worked with that law  
6 firm before.

7           Q     And have you worked with the named  
8 plaintiffs or defendants before?

9           A     Not before this case, no.

10          Q     And after this case?

11               MR. BERKOWITZ: Objection to the  
12 form. Calls for speculation.

13          A     Do you mean have I worked with  
14 them --

15          Q     In other cases.

16          A     In other cases since the start of  
17 this case, is that what you mean?

18          Q     Since the start of the case.

19          A     No, I haven't. I only worked on  
20 this particular case for that particular  
21 client.

22          Q     Do you know the name of the  
23 plaintiffs in this case?

24          A     Yes, I do.

25          Q     Who are they?

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1           A     You're referring to Hangzhou Chic,  
2     H-A-N-G-Z-H-O-U, and Chic is C-H-I-C.

3           Q     Is that the only party you're  
4     working for in this case?

5           A     There's -- I believe there are also  
6     the company called Unicorn, Unicorn  
7     technology.

8                     No, I'm sorry, it's Unicorn Global,  
9     who are also plaintiffs in this case.

10          Q     And aside from this case, you have  
11     not worked with them in other cases?

12          A     I have not worked with Hangzhou  
13     Chic and Unicorn outside of this case.

14          Q     Mr. Hatch, what's your hourly rate  
15     for doing work in this case?

16          A     It's \$450.

17          Q     Per hour?

18          A     Per hour, yes. I believe that's in  
19     my report.

20          Q     Is that the amount that you usually  
21     charge your clients?

22          A     Yes, it is. It's a standard rate,  
23     and it's always the -- you know, not  
24     contingent upon the outcome of this case in  
25     any way.



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1           Q     And that's the same rate for  
2     providing your analysis and attending  
3     deposition?

4           A     Yes.   However -- actually, I'm not  
5     sure if I have a different rate for  
6     depositions specifically.

7                     With some of my work I have a  
8     slightly higher rate for deposition, which  
9     may or may not be the case with this case.

10          Q     Have you talked about your rate for  
11     attending deposition in this case?

12          A     I have -- it would have been agreed  
13     when I started to work with the attorneys,  
14     yes.

15          Q     I'm sorry, I'm not quite  
16     understanding you.

17                     So you said for some work there may  
18     or may not be a higher rate.

19                     Are you charging a higher rate for  
20     attending deposition in this case?

21          A     I would have to check.

22                     With some clients I do charge --  
23     generally, I do charge a higher rate for  
24     deposition and trial, and that depends upon  
25     the agreement, that particular agreement that

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1 has been made with the attorney.

2 Q Has there been an agreement made  
3 with an attorney?

4 A There has, and I would have to  
5 double check what that is. It's -- likely,  
6 it's slightly higher for a deposition.

7 Q How many hours have you spent --  
8 have you spent preparing and drafting your  
9 declarations in this case?

10 MR. BERKOWITZ: Objection to form.

11 A Last year there was a lot of  
12 analysis of a lot of different hoverboards  
13 outside of the hoverboards that are in this  
14 case.

15 There were a significant number of  
16 hours involved in that part of the analysis.

17 This year I created three reports  
18 and also conducted an analysis on five  
19 hoverboards, but more specifically, the  
20 current defendants, and therefore, there was  
21 less time.

22 It's hard to estimate the hours,  
23 but this year may be somewhere in 80 to 150  
24 in that work.

25 Q Can you tell us about TEAMS Design

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1 USA?

2 A Sure, yes.

3 It's a design consultancy that I --  
4 I founded the Chicago branch of in 1998 and  
5 continued to -- to lead up until two years  
6 ago.

7 Q What happened two years ago?

8 A I decided to -- to do my Ph.D., and  
9 it's a full-time program and I dedicated  
10 myself towards that.

11 Q Are you still with TEAMS Design  
12 USA?

13 A I'm not. I am, however, on the  
14 board and have partial ownership still.

15 Q Is that a -- what is the formality  
16 of this company; is that a partnership or is  
17 it a limited corporation or is it an  
18 incorporated business?

19 A It's a -- I believe it's called a C  
20 Corp. So it's not -- it's not public, if  
21 that's what you mean. It's privately held.

22 Q And when you're saying the Chicago  
23 branch, what's the headquarter of this  
24 organization? Where's the headquarters?

25 A The headquarters is in Germany, and

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1       they were founded in 1956.

2           Q     When you were working there, how  
3       many staff employees did you supervise?

4           A     It ranged through the years. At  
5       the very start, I just had one employee and  
6       we went up to about 28, I believe, and as an  
7       average, usually around 15 to 20, I guess.

8           Q     Do you know any person who worked  
9       for plaintiff, Hangzhou Chic, at Intelligent  
10      Technology Corporation?

11           MR. BERKOWITZ: Objection to the  
12      form.

13           A     I don't personally know them, any  
14      person that works there, no.

15           Q     Have you talked with anyone who  
16      worked for them -- not them, for it, just one  
17      company?

18           MR. BERKOWITZ: Objection to form.

19           A     I've not spoken directly with  
20      someone who works with Hangzhou Chic.

21           Q     Do you know any person who works  
22      for Unicorn Global, Inc.?

23           A     I don't personally know anyone who  
24      works for Unicorn Global, Inc.

25           Q     Have you talked to anyone who works

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1       for Unicorn -- who works at Unicorn Global,  
2       Inc.?

3           A     I've not spoken with anyone who  
4       works at Unicorn Global, Inc.

5           Q     Do you know the person named Jing  
6       Cui?

7                   And I'll spell that for you.  
8       J-I-N-G, and C-U-I, last name.

9                   MR. BERKOWITZ: Objection to the  
10      form.

11          A     I don't know personally that  
12      person.

13          Q     Have you seen any documents drafted  
14      by this person?

15                  MR. BERKOWITZ: Objection to the  
16      form.

17          A     I'm sorry, who is the person, a  
18      manager of one of the companies?

19          Q     They are the accolades with the  
20      company, yes.

21          A     I don't think I've seen any  
22      documents drafted by them.

23          Q     Have you seen any reports submitted  
24      by them in court?

25                  MR. BERKOWITZ: Objection to the

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1 form.

2 MR. CHENG: Can you be more  
3 specific so I understand your objections  
4 better?

5 MR. BERKOWITZ: Sure.

6 It's outside the scope. It's  
7 unclear who you're referring to, what reports  
8 you're referring to. It's unclear what court  
9 you're referring to --

10 MR. CHENG: I will be more  
11 specific.

12 MR. BERKOWITZ: -- or when.

13 Q Mr. Hatch, do you know if Jing Cui  
14 submitted any declarations in this case?

15 MR. BERKOWITZ: Objection to the  
16 form. Asked and answered.

17 A I'm not aware of reading any of  
18 those -- any of those declarations.

19 Q Do you know a person with the name  
20 of Yia Wei Ying, Y-I-A, W-E-I, first name and  
21 last name is Y-I-N-G.

22 A No, I'm not familiar with that name  
23 right now.

24 Q Do you know whether or not this  
25 person submitted any declarations in this --

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1 in this case?

2 A I'm not familiar with this person's  
3 declarations.

4 Q Do you know a person with the name  
5 Arthur Yuan, Y-U-A-N?

6 A Is Arthur an attorney?

7 Q I ask questions here.

8 A Oh, I'm sorry.

9 I believe there was an Arthur who  
10 was an attorney on the case last year, but  
11 again, I'm -- I'm not sure.

12 Q And do you know if Arthur Yuan ever  
13 submitted any declarations in this case?

14 A If he was the attorney on my  
15 client's side, the only declarations that I  
16 know of are the declarations that I wrote.

17 Q I'm sorry, can you -- can you  
18 repeat your answer? I don't think I quite  
19 got it.

20 A I'm not sure if -- if Arthur is the  
21 attorney.

22 Q Arthur is the attorney with a firm  
23 Loeb & Loeb.

24 A Okay, great.

25 So I'm not familiar with

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1        declarations that they submitted other than  
2        my declarations.

3            Q     You don't know whether or not he  
4        submitted declarations in this case?

5            A     I -- I believe they -- they did  
6        submit opinions to this case. I'm fairly  
7        sure of that.

8                    I only provided my declarations.  
9        I'm only aware of the declarations that I  
10       provided.

11           Q     Did you read any of his  
12        declarations?

13                   MR. BERKOWITZ: Objection to the  
14        form. Asked and answered multiple times.

15           A     I'm sorry, can you repeat it?

16           Q     Did you read any of his  
17        declarations?

18           A     Any of what declarations?

19           Q     Any of Arthur Yuan's declarations  
20        submitted in this case.

21           A     No, I -- the only declarations I'm  
22        aware of submitted from our side were from  
23        me, that I know of.

24           Q     Do you have any financial interest  
25        depending on the outcome of this case?



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1           A     I believe I have answered that  
2           already, but no, the outcome does not affect  
3           my -- anything financially for me.

4           Q     Did you actually solicitate  
5           business from either the firm Loeb & Loeb or  
6           from the client?

7                     MR. BERKOWITZ: Objection to form.

8           A     No, I was approached by them. I  
9           would not have approached them about this  
10          case.

11          Q     Do you know if TEAMS Design USA  
12          actively advertised their business and  
13          solicitute business from the law firm of Loeb  
14          & Loeb or from the plaintiffs in this case?

15          A     No, TEAMS doesn't directly  
16          solicitute business from them beyond having a  
17          website, but it is not directed at those  
18          companies.

19          Q     Do you use any agent, advertising  
20          companies, online platforms, to advertise  
21          their business?

22          A     There -- there is a marketing group  
23          that does look after social media posts, but  
24          they don't do cold calling or direct calling  
25          on potential clients.

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1           Q     Out of the declarations and the --  
2           out of the declarations you submitted in this  
3           case and the expert witness report and the  
4           rebuttal report you provided, did you  
5           prepare -- did you prepare those documents by  
6           yourself or with the assistance of another  
7           party?

8           A     I did a high majority of the work,  
9           certainly all the analysis and the writing,  
10          and I conferred with the attorneys for their  
11          opinion, or rather, you know, on grammatical  
12          errors and things like that.

13                So there was some help, but the  
14          high majority of the opinions are all mine.

15          Q     What documents did you review to  
16          complete the declarations that you provided  
17          before you -- before you provided the expert  
18          witness reports?

19                MR. BERKOWITZ:  Objection to the  
20          form.

21          A     I believe I've -- I've documented  
22          that in Appendix C.

23                I reviewed the -- you're asking  
24          which documents I reviewed.

25                I reviewed the patents and the --

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1 in this case, and the file histories, but I  
2 also reviewed the accused products  
3 themselves.

4 Q By "accused products," what  
5 products were you referring to?

6 A The -- you know, more specifically  
7 in the infringement report this year, my  
8 focus was to look at the accused products  
9 that I have termed Gyroor A through E.

10 Q Okay. So you're referring to the  
11 expert witness report you provided this year.

12 Did you review -- are those the  
13 only products that you reviewed in this case?

14 MR. BERKOWITZ: Objection to the  
15 form.

16 A In the previous part of this case,  
17 there were a lot more accused products. So  
18 I -- I reviewed, as I mentioned before, a lot  
19 more products last year.

20 Q How many products did you review?

21 A I'm not sure of the number. There  
22 were very many.

23 I probably reviewed 10 or 12  
24 physical products in person and maybe just as  
25 many through other detailed information that

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1 was outside of the Gyroor products.

2 Q By other detailed information, do  
3 you mean photos?

4 A Yes. Outside of the Gyroor  
5 products, there were products that were not  
6 obtainable by the counsel last year and so  
7 I -- I reviewed them via photos of different  
8 angles of those products, but the Gyroor  
9 products in this case I've reviewed in  
10 person.

11 Q Who provided the products to you?

12 A I -- I believe one of them I did  
13 purchase myself online, but the other Gyroor  
14 products were provided to me on my request by  
15 the previous counsel.

16 Q Aside from the Gyroor products, did  
17 you review any other accused products in  
18 person or did you obtain any other -- did you  
19 obtain any other accused products in their  
20 physical form?

21 MR. BERKOWITZ: Objection to form.  
22 Outside the scope of the reports.

23 A I -- I did review some other  
24 products that were not manufactured or I  
25 believe they were not manufactured by Gyroor

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1 in person last year, yes.

2 Q And for those products that you did  
3 not receive a physical form, how did you  
4 compare the products with -- with the  
5 patents?

6 MR. BERKOWITZ: Objection to form.  
7 Outside the scope.

8 A In some of the products where I or  
9 all the attorneys were not able to get  
10 physical products, partly because they had  
11 been pulled off of the market, they provided  
12 me with substantial photos of them and that's  
13 what I used for my analysis, but that was  
14 only for non-Gyroor products.

15 Q Do you think the substantial photos  
16 are sufficient for you to form your opinion?

17 MR. BERKOWITZ: Objection to form.  
18 Calls for speculation.

19 A I think in that particular case for  
20 those non-Gyroor products, I was able to  
21 provide some opinion based on the limited  
22 information that I could get from the photos,  
23 but I also acknowledge that I would need to  
24 examine the physical product to finish that  
25 analysis.

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1                   However, the Gyroor products, I --  
2           I had in person.

3           Q     Is there a substantial difference  
4           between the Gyroor products and the  
5           non-Gyroor products?

6                   MR. BERKOWITZ:  Objection to form.  
7           Calls for speculation.

8           A     That was not necessarily part of my  
9           analysis.  That is, I wasn't comparing the  
10          Gyroor products to the non-Gyroor products,  
11          however, the Gyroor products I did have in  
12          person and some of the non-Gyroor I didn't.

13          Q     For the non-Gyroor products that  
14          you did not obtain, the product that you only  
15          viewed the photos, did you conclude that they  
16          were infringing or do you think they were not  
17          infringing products?

18                   MR. BERKOWITZ:  Objection to the  
19          form.  Outside the scope.

20                   I just caution the witness to the  
21          extent this is not a -- not referring to a  
22          report that was issued.  Just be aware of  
23          that.  It could be privileged communications  
24          that you shouldn't disclose.

25                   MR. CHENG:  I'm not soliciting

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1 any privileged information.

2 If there's any question related to  
3 any privilege, please assert it clearly so I  
4 know that question should be avoided.

5 However, if it's not privileged  
6 information, I'm free to ask.

7 MR. BERKOWITZ: Sure. So I'm  
8 cautioning the witness.

9 MR. CHENG: Okay.

10 MR. BERKOWITZ: I don't fully  
11 understand the question, so it's hard to give  
12 a precise instruction.

13 I'm telling the witness to the  
14 extent that his answer may reveal privileged  
15 communications, you be aware of that.

16 Go ahead.

17 A For clarification, can you repeat  
18 the question?

19 Q Of course.

20 You mentioned -- so let's do this  
21 step by step.

22 A Yes.

23 Q For some of the products that you  
24 reviewed, you did not review the physical  
25 product?

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1           A     For some of the non-Gyroor  
2           products, I was unable to examine the  
3           physical product which would have been  
4           optimal.

5           Q     Did you form -- and for those  
6           products you only examined the image or the  
7           photos provided to you?

8           A     For those specific non -- for a few  
9           of the non-Gyroor products, I was only able  
10          to analyze some photos.

11          Q     And after analyzing those photos,  
12          did you form your opinion as to the  
13          infringement nature of those products?

14               MR. BERKOWITZ: Objection to form.

15          A     I was -- after analysis of the  
16          non-Gyroor products, I was able to provide an  
17          opinion on that basis, on the limited  
18          information that I had, but also requested to  
19          have the physical product for a more thorough  
20          analysis.

21          Q     Did you ever receive what you  
22          requested?

23               MR. BERKOWITZ: Objection to form.  
24          Calls for speculation.

25          A     I did request a number of



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1       hoverboards that I didn't originally have,  
2       non-Gyroor hoverboards, and did eventually  
3       receive some that helped my analysis, yes.

4           Q     But not all of those non-Gyroor  
5       products?

6           MR. BERKOWITZ:  Objection to form.  
7       Mischaracterizes testimony.

8           A     Some of the non-Gyroor products  
9       last year had been pulled from the market and  
10      the attorneys and myself were unable to get a  
11      hold of physical samples.

12          Q     Did you provide any opinion on  
13      those products that you did not receive?

14          A     I did provide --

15          MR. BERKOWITZ:  Objection.

16                Just note my objection to the form.  
17      It's been asked and answered multiple times.

18                You can answer.

19          A     For the non-Gyroor products that  
20      I -- I didn't have a physical product on, I  
21      did provide analysis and also opinions, but  
22      also asked for further physical products so  
23      that I could create a more detailed analysis.

24          Q     That's not the question I asked.

25                And I will repeat my question, and

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1 I want you to answer specifically to the  
2 question I asked.

3 For the products, you never  
4 received a physical product, for the accused  
5 products that you never received the physical  
6 products, did you provide your opinions on  
7 those products?

8 MR. BERKOWITZ: Objection to form.  
9 Asked and answered.

10 A I did provide an opinion, also an  
11 initial analysis as detailed in my  
12 declaration and made it clear that a better,  
13 more detailed analysis would be through a  
14 physical product.

15 I hope that answers your question.

16 Q How many patents -- how many design  
17 patents did you review?

18 A I reviewed the four patents and  
19 their file histories, the ones that are  
20 relevant for this case, and I believe last  
21 year I also reviewed -- I would have to  
22 check.

23 I think there was a utility patent  
24 that I reviewed but I did not base my  
25 opinions on.

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1                   MR. CHENG: Ms. Court Reporter, can  
2           we take a break? Ten minutes.

3                   (Brief recess taken.)

4                   Q     Let me introduce into evidence --  
5           let me introduce Exhibit 1, and I will share  
6           that with everyone in the chat.

7                   (Above-mentioned document marked  
8           for Identification.)

9                   Q     Mr. Hatch, can you download this  
10          file or do you want me to share that with  
11          you?

12                  A     I've downloaded it and I can view  
13          it. Thank you.

14                  Q     Okay. You previously mentioned  
15          that you provided declarations in this case,  
16          starting in 2021.

17                   Do you recognize this document?

18                  A     I do, yes.

19                   And thinking of the timing of this,  
20          this might even be 2020 when I started in  
21          this case. It's all COVID years, but yes, I  
22          do recognize this document.

23                  Q     So do you recognize this document  
24          was provided by you?

25                  A     Yes. And I'm sorry, I don't know.

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1 I think it might be at the end of 2020, but  
2 yes, this is from me.

3 Q Meaning the last page has your  
4 signature.

5 Can you confirm that you signed  
6 that document?

7 A Yes. I see the date as well. It  
8 is the end of 2020.

9 Q So you did provide expert  
10 declarations in the year of 2020?

11 A Yes, I believe so.

12 Q Okay.

13 A And I think when I was referring to  
14 2021 and whether there were non-Gyroor  
15 products, that was at around this time, which  
16 was the end of 2020.

17 Q So you're saying this declaration  
18 does not implicate Gyroor products?

19 MR. BERKOWITZ: Objection to the  
20 form.

21 A That's not what I said, no.

22 Q I'm sorry, what did you say?

23 A That this declaration written at  
24 the time, towards the end of 2020, included  
25 some non-Gyroor products.

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1 Q Included non-Gyroor products?

2 A Yes.

3 Q I see.

4 MR. CHENG: I'm going to introduce  
5 to you in the chat the second document, which  
6 is marked as Exhibit No. 2.

7 (Above-mentioned document marked  
8 for Identification.)

9 MR. CHENG: Can you all see this  
10 document?

11 MR. BERKOWITZ: I downloaded it.

12 Paul, have you been able to  
13 download it?

14 THE WITNESS: Yes, and I've opened  
15 it.

16 MR. BERKOWITZ: Okay.

17 Q Mr. Hatch, do you recognize this  
18 document?

19 A I do, yes.

20 Q And can you confirm that the  
21 document was prepared and signed by you?

22 A Yes, it is signed by me. I believe  
23 the case number is different from the current  
24 case here.

25 Q Exactly. That's what I'm trying to

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1 understand.

2 You said you have not worked with  
3 plaintiffs in other cases aside from the  
4 current case that you're being deposed for.

5 Did you prepare this document?

6 MR. BERKOWITZ: Objection to the  
7 form.

8 A I did provide -- prepare this  
9 document, yes, and I see this is probably the  
10 same or very similar to the other document  
11 that I also prepared, Exhibit 1, but I also  
12 see the case number is different.

13 I was not aware that there were two  
14 different case numbers for this case.

15 Q Did you authorize your report to be  
16 used in this case?

17 MR. BERKOWITZ: Objection to the  
18 form.

19 A I did authorize the attorneys to  
20 use my document. I was not aware that this  
21 would be a separate case because it involves  
22 the same material.

23 Q I don't know if it involved the  
24 same material.

25 What I'm trying to understand is,

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1       if this report is prepared by you, then you  
2       should have known that your opinions provided  
3       in the case 20-cv-05905 is this document  
4       prepared by you.

5               MR. BERKOWITZ: Objection to the  
6       form. Argumentative. Asked and answered.

7               A     This document is provided by me,  
8       but I was not aware of the time that -- at  
9       the time that this may be used in a different  
10      case, but it -- it's regarding the -- the  
11      same material.

12              Q     On the first page of Exhibit No. 2,  
13      there is a case number, which is 20-cv-05905.

14                    Can you see that case number?

15              A     Yes, I do see that. Yes.

16              Q     Did you put in the case number on  
17      the first page?

18               MR. BERKOWITZ: Objection to the  
19      form.

20              A     I'm not sure if I actually put that  
21      case number or if possibly the attorneys had  
22      corrected what I had there before.

23              Q     So it's possible that the attorney  
24      used your report and changed the case number?

25               MR. BERKOWITZ: Objection to the

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1 form.

2 A It's possible that they did minor  
3 edits like that and, obviously, I would have  
4 trusted them with a case number. It's not  
5 something I would have known about.

6 Q Did you sign for this document?

7 A I believe you've asked that, but  
8 yes, I did sign this document and I did write  
9 this document. This is my analysis.

10 Q And do you know what your analysis  
11 was used for in the case 05905?

12 MR. BERKOWITZ: Objection to form.

13 A I see now, obviously, that it has a  
14 different case number, but the -- my opinions  
15 is what counted here and I -- I knew those --  
16 how those were being used.

17 I was not aware that it had a  
18 different case number, though.

19 Q But you did provide this report  
20 separately or it's just one report being used  
21 in different cases?

22 MR. BERKOWITZ: Objection to form.

23 A No, I did provide this separately.  
24 It was -- for me, it was part of the  
25 continuing -- continuing analysis of the very



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1 many infringing products.

2 Q Do you know what are the accused  
3 products in the case 05905?

4 MR. BERKOWITZ: Objection to form.  
5 Outside the scope.

6 A This is obviously, as you've  
7 explained, a case outside of this case, but  
8 the report does show the accused products in  
9 this case, yes. There are very many.

10 Q And do you remember when this  
11 report was executed or signed by you?

12 A I do see the date is included  
13 there, which I don't question. It -- it was  
14 filed on November the 30th, 2020.

15 Q So you've worked with plaintiffs in  
16 multiple cases?

17 A I -- at the time I was under the  
18 impression this was the same case, but I see  
19 it has a different case number now, but my  
20 analysis and my opinions were, as we can see,  
21 the same and consistent.

22 Q Have you worked with plaintiffs in  
23 any other cases?

24 A I am not aware of any cases outside  
25 of these ones we're looking at that I worked

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1 with them on.

2 Q Back to Exhibit No. 1, and if you  
3 can take a look at page number 21. and  
4 there's a Table 8, "Accused Products of  
5 Species I."

6 Can you see that table?

7 A Yes, I see this table.

8 Q And there are nine pictures on this  
9 page and the bottom metal picture is a  
10 hoverboard with the name or the brand name  
11 SYLUS, S-Y-L-U-S.

12 Can you see that one?

13 A Yes, I see that one.

14 Q Did you receive a physical product  
15 of this SYLUS hoverboard?

16 MR. BERKOWITZ: Objection to form.  
17 Outside the scope.

18 A I'm not sure. I think it's quite  
19 possible for this particular one. You see  
20 this is one of very many and obviously it  
21 looks very familiar.

22 Q Okay. and your declaration, Exhibit  
23 1, the picture of the SYLUS hoverboard was  
24 used as evidence to prove its infringing  
25 product?

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1                   MR. BERKOWITZ: Objection to form.  
2                   Mischaracterizes documents.

3                   A     This particular hoverboard was one  
4                   of very many that I analyzed and did conclude  
5                   they were substantially the same in the eyes  
6                   of the ordinary observer to the infringed  
7                   patent.

8                   Q     Aside from the picture included  
9                   here, did you review any other image or the  
10                  physical products related to this SYLUS  
11                  hoverboard?

12                  MR. BERKOWITZ: Objection to form.  
13                  Outside the scope.

14                  A     It's very likely that I looked at  
15                  other views of this particular product, one  
16                  of many here, and I think I may have seen the  
17                  physical product for this one as well.

18                         It's obviously very familiar  
19                  because it's -- it's the same shape and form  
20                  or very similar shape and form to many of the  
21                  hoverboards here.

22                  Q     Aside from this perspective view of  
23                  the SYLUS hoverboard, did you include any  
24                  other images for this SYLUS hoverboard in  
25                  this report?

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1           A     In this particular report, I  
2     believe I only show one of the images in one  
3     particular view, but my analysis was -- was  
4     broader.

5           Q     Did you view other images in other  
6     reports but you only particularly mentioned  
7     this particular report?

8                     MR. BERKOWITZ:  Objection to the  
9     form.

10          A     I don't know, for instance, if in  
11     that other case that you brought forward, if  
12     it was included there.  I may have included a  
13     different view.  It's possible, but certainly  
14     my analysis beyond just looking at one  
15     particular view.

16          Q     Even though there's only one view  
17     included in this report?

18                     MR. BERKOWITZ:  Is there a  
19     question?

20                     MR. CHENG:  Yes.

21          Q     So based on this report, based on  
22     this one image, you conclude that, according  
23     to your report, this product is infringing on  
24     the patent in suit?

25                     MR. BERKOWITZ:  Objection to form.

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1 Mischaracterizes testimony.

2 A No, that's not what I said.

3 I've only -- in this particular  
4 report, I've only included this one view.

5 Because there are so many similar  
6 infringing images for the conciseness of this  
7 report, I only showed one image; however,  
8 there were very many other views and other  
9 images that I analyzed among these products  
10 as well as analyzed physical products.

11 Q And why did you not include other  
12 views in this report?

13 A They -- the -- for the conciseness  
14 of the report itself, to report the opinion,  
15 it was not necessary to show all of the views  
16 of all of the products because there were, in  
17 this case, so very many. However, later  
18 reports where I was analyzing just four or  
19 five products, I -- I did then provide more  
20 images.

21 Q When you say -- when you said not  
22 necessary, do you think this one image is  
23 sufficient to prove that this is an  
24 infringing product?

25 MR. BERKOWITZ: Objection to the

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1 form. Asked and answered multiple times.

2 A This image only -- does not provide  
3 all of the evidence of the analysis  
4 necessary. This image represents one product  
5 just for this report. The analysis was done  
6 on very many images and physical products.

7 Q So based on this one image, it's  
8 not conclusive this product is infringing?  
9 Without other images, this conclusion is  
10 insufficient from this one image?

11 MR. BERKOWITZ: Objection to form.  
12 Mischaracterizes testimony.

13 A That's not what I'm saying, but  
14 what I'm saying is, I've included one view as  
15 part of this document. However, the analysis  
16 of the infringement itself was done using  
17 many years.

18 Q If the views are not included in  
19 this report, how can we conclude that you  
20 actually viewed other angles of this product?

21 A I believe it would be stated in the  
22 report that I analyzed many views and  
23 physical products as part of my analysis.

24 Q So although the images were not  
25 included, your words that you viewed other

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1 images to be sufficient to conclude that the  
2 products is infringing?

3 A The report is a reflection of my  
4 analysis and it is the -- the aim of the  
5 report is not to provide every possible piece  
6 of evidence, but to provide my opinion, based  
7 upon an analysis of the evidence and  
8 therefore, that's what it does.

9 Q And in preparing this document --  
10 in preparing this declaration marked as  
11 Exhibit 1, what documents did you review?

12 A I reviewed the relevant patents,  
13 filing histories, very many images of the  
14 accused products and a number of physical  
15 products as part of the analysis to prepare  
16 this document.

17 Q And do you know what this document  
18 was used for?

19 MR. BERKOWITZ: Objection to form.

20 A I'm sorry, what do you mean?

21 Q What document was used to support?

22 MR. BERKOWITZ: Same objection to  
23 form.

24 A The -- my analysis of this  
25 document -- my declaration provided my

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1 opinion on this case and it was used in this  
2 case.

3 Q To support a motion?

4 A That is correct. I -- I stated  
5 that I think in the -- yes, in the opening  
6 paragraph, that this declaration is in  
7 support of a preliminary injunction that was  
8 going on at the time.

9 Q Did you review the motion for  
10 preliminary injunction?

11 A I'm not sure. I don't think I -- I  
12 don't think I did at the time. I was focused  
13 on my own report. I don't think I saw  
14 information like that.

15 Q And who provided you with a list of  
16 accused products?

17 MR. BERKOWITZ: Objection to the  
18 form.

19 A The attorneys, the counsel at the  
20 time would have provided me with a list of  
21 the potentially infringing reports when they  
22 asked for my opinion on them.

23 Q Do you know how many potential  
24 infringing products were identified?

25 MR. BERKOWITZ: Objection to the



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1 form. Outside the scope.

2 A In -- in this particular report,  
3 there were very many that were part of the  
4 analysis. I'm not aware of the exact number.

5 Q Were there any products identified  
6 that -- identified by the attorney as  
7 potentially infringing but deemed as not  
8 infringing by you?

9 MR. BERKOWITZ: So I would  
10 instruct -- to the extent -- I would instruct  
11 the witness not to answer on the grounds of  
12 privilege.

13 A Yeah, I believe I did have  
14 discussions with the attorney --

15 MR. BERKOWITZ: Just to be clear,  
16 I'm instructing you --

17 THE WITNESS: Okay.

18 MR. BERKOWITZ: -- again, at this  
19 point, to the extent it involves  
20 attorney-client communication, I'm  
21 instructing you not to answer.

22 THE WITNESS: Okay, yep.

23 MR. BERKOWITZ: Just to be clear,  
24 if you can answer without revealing any  
25 privileged communications or work product,

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1       you can do so.

2               But to the extent that it involves  
3       any communications with your attorney and  
4       anything else outside the scope of this  
5       declaration report, I instruct you not to  
6       answer.

7               THE WITNESS: Okay, good. I was  
8       kind of going there.

9               A     But yes, we had conversations and,  
10       obviously, you know, this -- I would not have  
11       provided an opinion on something infringing  
12       if I didn't believe it was infringing.

13              Q     Mr. Hatch, are you familiar with  
14       the patents-in-suit -- and when I use the  
15       term "patents-in-suit," do you know what  
16       patents I'm referring to?

17              A     I believe you're referring to the  
18       four patents that I referred to in my  
19       declaration this year. I also refer to them  
20       as the patents-in-suit.

21              Q     Are you familiar with those four  
22       patents?

23              A     Yes, I am familiar with those four  
24       patents.

25              Q     Are you familiar with all the prior

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1 art referenced in those four patents?

2 A I did gain familiarity by looking  
3 at the prior arts that is referenced in those  
4 four patents.

5 Q Are there any prior arts that you  
6 think should be viewed for infringement or  
7 not infringement analysis in this case?

8 MR. BERKOWITZ: I'm sorry, I didn't  
9 hear the first part of your question.

10 MR. CHENG: Ms. Reporter, if you  
11 got it, can you read it back.

12 (Whereupon, the record was read  
13 back by the reporter.)

14 MR. BERKOWITZ: Objection to the  
15 form.

16 A Yes. I'm not sure of your  
17 question, but my initial analysis was of the  
18 prior art that was — that was listed on the  
19 patents themselves, which is the normal  
20 approach for the initial analysis, pending  
21 the defendant, bringing any additional prior  
22 art that they may think is relevant.

23 Q Did you search for other prior  
24 art — did you search for additional prior  
25 art other than the ones referenced in the

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1 patents-in-suit?

2 A At the start of this analysis, no.  
3 I focused on the prior art that was listed on  
4 the four patents.

5 Q Are you familiar with patent -- the  
6 design patent number -- the design Patent No.  
7 US D739,906?

8 A Yes, I am familiar with that.

9 Q Is that -- is that a prior art to  
10 the four patents-in-suit?

11 MR. BERKOWITZ: Objection to the  
12 form.

13 A It is listed on two of the patents  
14 as being prior art and was, therefore, part  
15 of my analysis.

16 Q Is this, in your opinion, a prior  
17 art for all four patents-in-suit?

18 MR. BERKOWITZ: Objection to form.

19 A I believe its filing date was early  
20 enough to be part of the consideration. I'm  
21 not sure if there are other things that  
22 impede it from it being considered prior art,  
23 however, it was a part of my analysis.

24 Q Do you know the definition of prior  
25 art?

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1           A     I have an understanding of prior  
2     art, yes.

3           Q     Did you consider this 739,906  
4     patent -- and we'll refer to this one as the  
5     '906 patent.

6                     Did you consider this '906 patent  
7     only for analysis regarding two -- two of the  
8     patents-in-suit or for all four  
9     patents-in-suit?

10          A     In my analysis, I provided a full  
11     comparison of the '906 to all four patents,  
12     which I provided in detail.

13          Q     Mr. Hatch, do you understand the  
14     legal standard for design patent infringement  
15     analysis?

16          A     I have an understanding enough to  
17     be able to create an analysis. I'm not a  
18     lawyer, but I do rely upon my understanding  
19     of the law in my analysis.

20          Q     And can you tell us, what's your  
21     understanding of the law?

22          A     I think my report says it probably  
23     most succinctly. I did provide some summary  
24     there and obviously there are many aspects to  
25     the law.

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1                   If you have something quite  
2           specific, I can attempt to answer it.

3           Q     I'd like to understand your  
4           understanding regarding the legal standard  
5           applied by you for your report.

6                   MR. BERKOWITZ:  Objection to form.  
7           Asked and answered.

8           A     There's just a number of --

9           Q     In short, you have to answer the  
10          questions instead of directing me to a  
11          document.

12                   MR. BERKOWITZ:  No, I disagree with  
13          that statement.

14                   He answered your question.

15                   MR. CHENG:  No.  He referred me to  
16          a document.  That's not what I asked for.

17                   MR. BERKOWITZ:  I disagree with  
18          you.

19                   The witness should answer the  
20          question however he feels is appropriate.

21                   Continue.

22           A     I have included an outline in my  
23          report of the legal standards that help me in  
24          doing this analysis and I've relied upon my  
25          understanding of them.

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1                   It's not one standard. There are  
2           legal standards that are -- that I presented  
3           there.

4           Q     Did you do the search yourself or  
5           the legal standards was provided to you?

6                   MR. BERKOWITZ: Objection to the  
7           form.

8           A     The attorneys -- are you referring  
9           to the --

10          Q     I'm referring to Section 2, "Legal  
11          Standards," in your expert witness report.

12          A     Of 2022?

13          Q     Of 2022.

14                   MR. CHENG: Let me mark that as  
15          Exhibit 3, and I will drop that in the chat  
16          so we know we're clear.

17                   MR. BERKOWITZ: Thank you.

18                   (Above-mentioned document marked  
19          for Identification.)

20          A     Yes, I wanted to refer to an  
21          exhibit, and I realized there wasn't one.

22          Q     So this is Exhibit No. 3, and I'm  
23          putting that in the chat.

24          A     Okay, I have it in front of me.

25          Q     If you can take a look at Section

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1           2, "Legal Standards," which is on page 3.

2                   And as you can see, your case is  
3           cited in subsections related to the Legal  
4           Standards.

5                   Is that correct?

6           A     That's correct, yes. It stretches  
7           until page 6, yes.

8           Q     Did you search for the cases  
9           yourself?

10           A     Some, if not a lot, of this  
11           language would have -- I would have used in  
12           previous cases that I've been involved in,  
13           and so I think a lot of this came from me and  
14           at some point the past, either from  
15           information I was provided by attorneys or  
16           information that I searched myself.

17           Q     And which attorney provided you  
18           assistance?

19                   MR. BERKOWITZ: Objection to the  
20           form.

21           A     So for this document, I believe the  
22           majority of this I had already -- I provided,  
23           I put in here and I sourced it from the  
24           previous two that I worked on.

25                   It's also customary for me to ask



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1 the attorneys that I'm working for to check  
2 and to correct anything that I may have  
3 misstated here.

4 Q Which attorney did you ask to check  
5 this section?

6 A I would have asked the -- the  
7 current attorneys, such as Mark, to check  
8 over this section.

9 Q Did they give you any feedback on  
10 this section?

11 MR. BERKOWITZ: Objection.

12 And I instruct the witness not to  
13 answer.

14 A We spoke about it. I obviously  
15 can't divulge exactly what we said.

16 Q So can you, in your own words,  
17 describe the Legal Standards that is used for  
18 design patent infringement analysis?

19 MR. BERKOWITZ: Objection to the  
20 form. The report speaks for itself.

21 A I couldn't do it much justice, not  
22 being a lawyer, but I am -- you know, I do  
23 rely upon the information that I've read in  
24 here and I do have a good understanding of  
25 it, but I would refer to the writing.

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1                   Even if I were to do the analysis,  
2           I would refer back to the writing upon which  
3           I relied upon.

4           Q     You can read the relevant portion,  
5           if you want.

6           A     Which of these pages are you  
7           referring to as being relevant?

8           Q     I mean, that's your call.

9                   I'm asking which portion do you  
10          think is relevant to your understanding of  
11          the Legal Standards used for design patent  
12          infringement analysis.

13          A     I believe it's all quite relevant  
14          for this case.

15          Q     You can read it.

16          A     It's 14 pages long.

17                  MR. BERKOWITZ: Again, the witness  
18          is welcome to do that. I'm not sure that's  
19          productive use of the parties' time. If  
20          that's really what you want, you can have him  
21          read from his report.

22                  I'm just putting it out there that  
23          it might not -- it's your choice, but  
24          alternatively, you can have him read through  
25          it and you can ask questions you want to ask.

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1                   MR. CHENG: I want to understand  
2           which portion that he thinks is most relevant  
3           for the design patent infringement analysis.

4                   I mean, the whole section is  
5           devoted to Legal Standards but a lot of them  
6           are not — they're Legal Standards for  
7           analysis.

8                   MR. BERKOWITZ: I'm not sure I  
9           follow what you're asking, but it's your  
10          deposition.

11                   I'm not looking to interrupt you.  
12          I'm just trying to make use of the time we  
13          have. However you would like to proceed.

14                  Q     Mr. Hatch, you can go ahead and  
15          read the portion that you think is relevant  
16          for design patent infringement analysis.

17                  A     Just for clarification, I believe  
18          this is all relevant for the analysis. I  
19          don't — you mentioned just now but not  
20          before that you were looking for the most  
21          relevant parts. I think that's a different  
22          question.

23                  Q     Then the most relevant part is  
24          fine.

25                  A     It's all equally relevant. I

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1       wouldn't -- I wouldn't --

2               Q     That's good.

3                     Then you can read all portions that  
4     you think is most relevant.

5               A     If you're sure you want to use your  
6     time this way, because there's four pages of  
7     it that I would be reading here.

8                     I'm not quite sure why, but I'm  
9     happy to read it. So -- and stop me at any  
10    time.

11            Q     Sure. Of course.

12            A     Section 2, Legal Standards.

13                    "I am not a lawyer. Rather, I'm an  
14     industrial designer" -- and this is obviously  
15     just explaining, "Section A, the limiting  
16     purpose of a design patent. I understand  
17     that a U.S. patent does not grant the owner  
18     the right to use the invention. Rather, the  
19     owner is granted the right for a limited  
20     period of time to prevent others from making,  
21     using, offering for sale or selling the  
22     patented invention in the United States or  
23     importing the patented invention into the  
24     United States."

25            Q     I'm going to stop you here.

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1                   Do you know the limited period of  
2                   time? Do you know how long that is?

3                   A     Oh, I'm sorry, yes. It's mentioned  
4                   here. It's the limited time that is given to  
5                   design patents, which currently is -- or at  
6                   least for the patents involved in this case,  
7                   15 years. I believe -- yes, 15 years I think  
8                   is relevant for this.

9                   Q     Okay. And --

10                  A     Go ahead.

11                  Q     You can start from the second  
12                  paragraph of Section B and let's read from  
13                  there.

14                  A     The second paragraph of Section B  
15                  reads, "I understand that under precedent  
16                  from the U.S. Court of Appeals for the  
17                  Federal Circuit, the Federal Circuit, trial  
18                  courts have a duty to conduct claim  
19                  construction in design patent cases as in  
20                  utility patent cases," and that comes from  
21                  Egyptian Goddess.

22                         "The court has recognized the  
23                  design patents typically are claimed as shown  
24                  in drawings, and the claim instruction is  
25                  adapted accordingly."

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1                   It refers to --

2           Q     You can skip all the cases, just  
3     the substantial portion.

4           A     "Given the difficulties entailed in  
5     trying to describe the design in words, the  
6     preferable cost is not to attempt to construe  
7     a design patent by providing a detailed  
8     verbal description of the claimed design. As  
9     I understand, after a design patent claim is  
10    construed, the claim must be compared to  
11    accused design to determine whether there has  
12    been infringement. I also understand  
13    infringement occurs when an ordinary observer  
14    giving such attention as a purchaser usually  
15    gives deems two designs are substantially the  
16    same, meaning the resemblance is such as to  
17    deceive an observer inducing him to purchase  
18    one supposing it to the other."

19                "I am also aware that infringement  
20    is determined in the light of prior art by  
21    applying the ordinary observer test through  
22    the eyes of an observer familiar with the  
23    prior art. Thus, the hypothetical ordinary  
24    observer is presumed to have a complete  
25    knowledge of all relevant prior art."

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1 Q Good. Let's stop here.

2 A Okay.

3 Q So have you decided the scope of  
4 all the patents-in-suit in this case?

5 MR. BERKOWITZ: Objection to the  
6 form. Lack of foundation.

7 A I reviewed the prior art as  
8 mentioned before that was --

9 Q Sorry, not the prior arts. Sorry,  
10 not the prior arts. I mean the scope of the  
11 patents-in-suit.

12 MR. BERKOWITZ: Same objections.

13 A Yes, I believe I was answering that  
14 question.

15 I understand you're not referring  
16 to the prior art, but the prior art helps us  
17 inform, but yes, I did develop an  
18 understanding of the scope of the patents,  
19 the four patents-in-suit.

20 Q I'm sorry, did you just say that  
21 prior art should be considered to construe  
22 the scope of the patents?

23 MR. BERKOWITZ: I would suggest  
24 restarting the question and answer.

25 MR. CHENG: That's better.

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1           Q     So did you mean that prior art  
2           should be considered for the design patent --  
3           for the design patent construction, claim  
4           construction?

5           A     In the initial part of infringement  
6           analysis, the claim construction or the  
7           construing that one would do would be  
8           analyzing the provided images, the figures of  
9           the particular patents to understand whether  
10          they are plainly dissimilar to the accused  
11          product.

12                     Prior art helps inform the -- more  
13          exactly the scope in the second parts of the  
14          analysis when we look to understand if they  
15          are substantially the same.

16          Q     Just to be clear, you're saying  
17          that accused products and prior art should be  
18          considered for claim construction?

19                     MR. BERKOWITZ:  Objection to form.  
20          Mischaracterizes testimony.

21          A     Yeah, that's a little different.  I  
22          was talking about the infringement here, the  
23          first step to construe the patents.

24          Q     What should be considered for --

25                     MR. BERKOWITZ:  Don't -- no, no,



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1 hang on.

2 You have to let the witness finish  
3 if he's in the middle. You can't cut him  
4 off.

5 A Initially the figures themselves of  
6 the patents represent what is the claimed  
7 design and so those -- the first step in  
8 infringement analysis to construe what is  
9 claimed by those patents.

10 Q Do you think prior art and accused  
11 products should be considered for the first  
12 step of scope of claim construction?

13 MR. BERKOWITZ: Objection to form.  
14 Asked and answered.

15 A No. The accused products do not  
16 inform us of the scope of the patents in that  
17 first step.

18 Q And what are the scopes for the  
19 four patents-in-suit in this case?

20 A In infringement analysis, we  
21 construe the claim by looking at the figures  
22 of the patents themselves and only if we find  
23 that they -- you know, in infringement  
24 analysis, if we find that they are not  
25 dissimilar from the accused products, we move

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1 forward to compare them directly to the prior  
2 art.

3 I think that answers your question.

4 Q It didn't. I think you're mixing  
5 claim construction with infringement in that  
6 analysis.

7 Do you understand that those are  
8 two distinct steps for infringement analysis?

9 MR. BERKOWITZ: Objection to form.

10 A I do understand that there are  
11 distinct steps in infringement analysis, as  
12 I've outlined in my report, and I noticed the  
13 experts on the other side did not conduct,  
14 which I remarked in my rebuttal.

15 Q So do you know -- so what are the  
16 scopes?

17 A The scopes?

18 MR. BERKOWITZ: Objection to the  
19 form.

20 Q For the four patents-in-suit.

21 MR. BERKOWITZ: Objection to the  
22 form. Compound.

23 A If you're referring to  
24 understanding the scope based on construing  
25 for infringement analysis, then the figures

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1       themselves provide us with what that scope is  
2       by analyzing those.

3               I'm sorry, I'm confused by your  
4       question. Maybe it was too broad.

5               You said what are the scopes of the  
6       patents, is that right?

7               Q     What are the scopes for the  
8       patents-in-suit after your claim  
9       constructions?

10              MR. BERKOWITZ: Objection to the  
11     form.

12              A     The -- the scope is defined in,  
13     say, the second step of infringement  
14     analysis.

15              You know, I can't talk about  
16     outside of infringement analysis necessarily,  
17     but here for this report, it was important to  
18     understand the scope for the second part of  
19     infringement analysis by analyzing the prior  
20     art and its relationship or distance to the  
21     patents-in-suit.

22              Q     In your opinion, should broken  
23     lines be considered for claim construction?

24              MR. BERKOWITZ: Objection to form.  
25     Calls for a legal conclusion.

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1           A     Yeah, it's a very open question  
2           again. I cannot answer to whether I  
3           considered broken lines to be relevant in  
4           this particular analysis, in infringement  
5           analysis.

6                     Yes, broken lines are to be  
7           considered. They represent unclaimed areas  
8           of a patent, but they are to be considered as  
9           part of the analysis.

10           Q     So you think unclaimed areas as  
11           waiving the scope of design patent?

12                     MR. BERKOWITZ: Objection to form.

13           A     I didn't catch the middle word, was  
14           it leaving?

15           Q     No.

16                     So you're saying unclaimed areas  
17           are waiving the scope of design patent?

18           A     I don't believe that's what I said,  
19           but the unclaimed areas should be considered  
20           in analysis as I have done. You're asking  
21           whether they're waiting.

22                     Well, it really depends on what  
23           part of analysis and where the unclaimed  
24           matter is, you know. It's a -- whether it's  
25           in prior art versus the patents at hand.

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1           Q    Okay. Does the broken line form  
2           part of the claimed design for a design  
3           patent?

4           A    In the designed patents, the  
5           unclaimed -- I'm sorry, the broken line  
6           represents unclaimed areas of the patent.

7           Q    Okay. Do you think an unclaimed  
8           area of a patent should be considered for  
9           design patent infringement analysis?

10           MR. BERKOWITZ: Objection to form.

11           A    It depends whether -- well, it  
12           should be considered. That doesn't mean that  
13           it's claimed as such, but it also depends on  
14           whether the particular unclaimed area is in  
15           prior art or if it's in the patents at hand.

16           Q    And do you know what side-by-side  
17           comparison means?

18           A    Yes.

19           Q    Can you explain that to me?

20           A    I provided side-by-side comparisons  
21           in my report to show the analysis, but a  
22           side-by-side is comparing one item directly  
23           to another, for instance, a -- a particular  
24           figure compared to a similar viewpoint of the  
25           accused product, for instance.

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1           Q     You mean, a figure from the  
2           patents-in-suit be compared with a figure  
3           from an accused product?

4           A     Almost, yes. The -- for instance,  
5           a side-by-side might be between a patent and  
6           an accused product, and so you would show the  
7           figure from the patent next to a similar  
8           angle of -- of not a figure, but a photograph  
9           of the accused product. However, the  
10          analysis would be done by viewing the product  
11          as a whole.

12          Q     And do you think any prior art  
13          should be compared with the accused products  
14          and the patents-in-suit at the same time?

15          A     In the second part of the  
16          infringement analysis of the ordinary  
17          observer test, it is important to compare,  
18          also, the prior art.

19          Q     Side-by-side with the accused  
20          products and the patents-in-suit?

21          A     It's not a hundred percent.  
22                  I'm sorry, it's known as a  
23          three-way analysis, and it doesn't always  
24          have to be undertaken.

25                  However, I did provide a thorough

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1 three-way analysis as the experts on the  
2 other side have not done. And so I did do  
3 the three-way, which is like a side-by-side  
4 analysis.

5 Q Can you point to me where the  
6 three-way was done?

7 A It's not in your exhibits yet, but  
8 the side-by-side -- I'm sorry, the three-way  
9 analysis was done as part of both rebuttal  
10 reports that I provided.

11 MR. CHENG: We'll mark this  
12 document as Exhibit 4.

13 That is the rebuttal report  
14 provided by Mr. Hatch, dated September the  
15 12th.

16 (Above-mentioned document marked  
17 for Identification.)

18 A Maybe for the record, this is the  
19 rebuttal report to Jim Gandy and not the  
20 other rebuttal report I provided?

21 Q Right.

22 So there are two rebuttal reports.

23 This rebuttal is for Jim Gandy, and  
24 this rebuttal is marked as Exhibit 4.

25 Can you download this report and

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1 view the content of the report?

2 A Yes, I do have this report.

3 Q Okay. Can you point out the  
4 side-by-side comparison or the three-way  
5 comparison portion of the report?

6 A I see you didn't include the  
7 exhibit, but it's -- the exhibit to this  
8 rebuttal.

9 Q I'm including the exhibit as  
10 Exhibit 5 for this deposition.

11 (Above-mentioned document marked  
12 for Identification.)

13 Q And I'm sharing that with you in  
14 the chat.

15 A Okay. I do have that document.

16 Q Are you saying those are the  
17 three-way side by side analysis that you did?

18 A Yes, I did title it that way.

19 So it's a three-way comparison  
20 between the infringing products, the patents  
21 at issue and what was then the reported  
22 closest prior art, the '906.

23 Q The first time that you did this  
24 comparison, three-way -- is this the first  
25 time you did the three-way comparison in this



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1 case?

2 MR. BERKOWITZ: Objection to the  
3 form.

4 A I had done this analysis prior to  
5 this report but this documented and showed  
6 the analysis as a three-way.

7 MR. BERKOWITZ: I just want to note  
8 the time.

9 I think we've been going about an  
10 hour and 20 or so.

11 I just want to check in and see if  
12 the witness needs a break or is anybody  
13 thinking about lunch?

14 Do we have any thoughts?

15 MR. CHENG: We can take a break.  
16 If anyone wants to get lunch, I'm fine with  
17 that.

18 How long do you think we should  
19 break for?

20 MR. BERKOWITZ: Do you want to take  
21 five or ten minutes now and go for a bit and  
22 take lunch later or do you want to take lunch  
23 now?

24 MR. CHENG: I'm flexible.

25 MR. BERKOWITZ: Paul, is it okay

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1 with you, let's take five or ten now and go  
2 for another half an hour or 40 minutes and  
3 take lunch.

4 How does that sound?

5 THE WITNESS: That sounds perfectly  
6 fine with me.

7 (Brief recess taken.)

8 Q I shared a document marked as  
9 Exhibit 6 in the chat.

10 (Above-mentioned document marked  
11 for Identification.)

12 Q Mr. Hatch, can you open that  
13 document?

14 A I have it open.

15 Q I want you to look at this report  
16 and confirm that it's the report that you  
17 provided.

18 A Yes, this is a report that I --  
19 that I provided.

20 Q Do you know when you provided this  
21 report?

22 A Yes, I see it was August 2021.

23 Q Is that when you provided this  
24 report to defendants?

25 A I believe it would have been very

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1 close to this date, if not actually on that  
2 date.

3 I do see, however, this report has  
4 been marked up by someone and that was not in  
5 the original version.

6 Q That's marked up by the court.  
7 That's the only way that we received the  
8 report.

9 Did you do a three-way comparison  
10 in this report?

11 MR. BERKOWITZ: Objection to the  
12 form.

13 A I provided -- I did a three-way  
14 comparison as part of my analysis at this  
15 stage, but I provided that three-way  
16 side-by-side, at least presented it in the  
17 report that followed this. That was the  
18 rebuttal report of last year.

19 Q I'm just asking, did you do a  
20 three-way comparison in this report?

21 MR. BERKOWITZ: Objection to form.

22 A I did a three-way comparison, to  
23 answer your question, as part of my analysis  
24 as I was creating this report.

25 I did not show the three-way until

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1 the rebuttal, which followed this shortly  
2 after this report.

3 Q Why did you not show the analysis  
4 that you did in this report?

5 MR. BERKOWITZ: Objection to form.

6 A I -- this report was about my  
7 initial analysis and to provide the details  
8 that were important here rather than respond  
9 to information that the experts on the other  
10 side had then brought up to light.

11 So as they considered the '906 to  
12 be the closest prior art, I then provided the  
13 three-way analysis. However, prior to that,  
14 the '906 was only one of the many prior art  
15 for me to report about in this report. I  
16 hope that was very clear.

17 Q Not entirely.

18 Can you --

19 A Sure.

20 Q Can you rephrase your answer,  
21 because that sounds very confusing.

22 A Okay, yes.

23 I did mention a couple of things.  
24 But simply, I did do analysis on the prior  
25 art, which included, for instance, the '906.

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1                   However, because there was many  
2           pieces of prior art, I didn't include a  
3           three-way comparison analysis as part of this  
4           report on every one of those prior arts until  
5           the closest prior art was identified by the  
6           experts, and then I provide a three-way  
7           analysis as part of my report, for what they  
8           considered to be the closest prior art.

9           Q     Do you agree that the '906 patent  
10          is the closest prior art?

11                  MR. BERKOWITZ: Objection to the  
12          form.

13           A     When they put it forward, I  
14          don't -- out of the choices of prior art that  
15          has been put forward in this case, I don't  
16          disagree necessarily. I don't find it  
17          particularly -- well, I'm sorry.

18                  You know, it was important for me  
19          to then analyze the '906 because they had  
20          proposed it. It certainly wasn't my role  
21          to -- to question whether that's the closest  
22          or not, but to analyze it according to what  
23          they proposed as being the closest.

24                  My understanding of the law in this  
25          situation is that it is the -- the burden of

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1 the defendant to provide the closest prior  
2 art and they did that and I analyzed it.

3 Q Do you think an ordinary observer  
4 would know about the D '906 patent?

5 MR. BERKOWITZ: Objection to the  
6 form.

7 A As I stated, the understanding of  
8 infringement and in the ordinary observer  
9 test, the understanding of the ordinary  
10 observer, an ordinary purchaser with a -- who  
11 is an ordinary purchaser of products like  
12 this, would have had knowledge of prior art  
13 at the time of the patent.

14 Q I'm sorry, this might come as I'm  
15 asking you the same question, but because  
16 your answer was not very clear, do you think  
17 this ordinary observer would know about the D  
18 '906 patent when looking at the products?

19 MR. BERKOWITZ: Objection to the  
20 form.

21 A Yes. I'm sorry for my long  
22 answers. Sometimes you're being very broad  
23 with your questions and so I have to make  
24 sure you understand where I'm coming from.

25 But the ordinary observer in this

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1 particular case would be familiar with the  
2 '906 as well as other prior art. That is my  
3 understanding.

4 Q And what are the differences?  
5 Let's do the analysis one by one. Let's  
6 first focus on the D '723 patent, which is  
7 one of the four patents-in-suit.

8 What are the differences between  
9 the D '723 patent versus the D '906 patent?

10 MR. BERKOWITZ: Objection to the  
11 form.

12 A So you're requesting to run through  
13 the ordinary observer test, in which case we  
14 now look for similarities between the product  
15 and to understand whether they are not  
16 dissimilar or not.

17 Is that correct?

18 Q No, I'm asking you to compare the  
19 patents-in-suit with the prior art and to  
20 identify the similarity and the dissimilarity  
21 between those two patents?

22 MR. BERKOWITZ: Object to the form.  
23 It's outside the scope.

24 A Okay. You said between those two  
25 patents.

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1 Which two are you referring to?

2 Q I was referring to the D '723  
3 patent and the prior art, D '906 patent.

4 A I see.

5 Well, that's not part of the  
6 analysis. I think you misunderstand.

7 We compared the accused product and  
8 the patent to the prior art to understand  
9 which may be closer.

10 Q So you do not think a comparison  
11 between the patents-in-suit and the prior art  
12 is necessary?

13 MR. BERKOWITZ: Objection to form.

14 A The patents -- each of the  
15 patents-in-suit is compared to prior art,  
16 such as the '906, only when also comparing it  
17 to the accused because it's relevant to  
18 understand the distance of one to the other  
19 and not a direct comparison in the way that  
20 you're suggesting.

21 Q So -- well, I'm not suggesting  
22 anything. I'm simply asking whether or not  
23 you have done any comparison between the '723  
24 patent and the prior art, D '906 patent.

25 A Yes, I -- I have conducted -- you



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1 know, I became very familiar with the '906  
2 patent, to understand -- I'm not sure what  
3 your question is.

4 I did analyze the patent. I did  
5 compare it -- sorry, I did compare the '906  
6 to the '723 in particular regard as part of  
7 the three-way analysis, which included the  
8 accused product because the '906 helps us  
9 understand the scope of the '723.

10 Q Scope is the word used for claim  
11 construction.

12 So are you saying the '906 patent  
13 will help us understand claim constructions?

14 MR. BERKOWITZ: Objection to the  
15 form.

16 A And again, you're being quite  
17 general.

18 But at the very start of the  
19 infringement analysis, we looked at the  
20 patent, its patent history, you know,  
21 claimed/unclaimed matter. And the -- the  
22 prior art, such as the '906, is only put into  
23 direct comparison when we have already  
24 decided to move into the second part of the  
25 infringement analysis. And that being said,

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1 of course, because any prior art that's  
2 disclosed in part of the patent, it is part  
3 of the initial analysis as well.

4 I'm sorry, that was very long as  
5 well, but I think your question was a little  
6 bit off.

7 Q I don't think my question was off.  
8 I think you're confusing the scope analysis  
9 with the infringement analysis, but let's  
10 just be clear.

11 I will ask you if the '906 patent  
12 was compared to the D '723 patent.

13 MR. BERKOWITZ: Objection to form.  
14 Go ahead.

15 Q Did you compare the D '723 patent  
16 with the D '906 patent to identify the  
17 similarity and dissimilarity between the two  
18 patents?

19 A I did include the -- comparing the  
20 '906 to the '723 when doing a three-way  
21 analysis with the accused products in mind to  
22 understand the similarities and  
23 dissimilarities.

24 Q I just want to give you some  
25 background of why I ask this question.

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1           A     Okay.

2           Q     So prior art comes into play to  
3           show that there are some prior art that has  
4           disclosed certain designs already.

5                     So in light of this -- so in the  
6           infringement analysis, when you compare the  
7           accused products with the patents-in-suit, if  
8           your -- if the -- if there is a prior art,  
9           the difference between the prior art and the  
10          patents-in-suit is constructive.

11                    Because when you compare those  
12          patents, when you compare the patents-in-suit  
13          with this prior art, you can tell that  
14          they're similar in certain aspects and  
15          they're dissimilar in certain aspects, and  
16          that helps you to perform this comparison  
17          between the accused products and the  
18          patents-in-suit.

19                    So first, you have to understand  
20          what are the differences between the  
21          patents-in-suit and the prior art.

22                    If the patents-in-suit and the  
23          prior art are the same, then really there's  
24          no need to do further analysis.

25                    So that's why I ask you, can you

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1       see the similarities and dissimilarities  
2       between the D '723 patent and the D '906  
3       patent.

4               MR. BERKOWITZ: Objection to the  
5       form, argumentative, asked and answered.

6               A     So to clarify, you're asking if I  
7       can see the similarities and dissimilarities  
8       between the '723 patent and the '906?

9               Q     Yes.

10              A     Which the answer would be yes.

11              Q     What are the similarities between  
12       those two patents?

13              A     The -- again, as part of this  
14       analysis -- I guess what you're saying is --  
15       I'm not sure what you're saying.

16                    What are the similarities?

17                    What I've provided here was part of  
18       a three-way analysis with the accused really  
19       to see about which is clear rather than list  
20       individual similarities, which is -- or  
21       differences, which is not technically part of  
22       the analysis, but you are correct in saying  
23       that the '906 should be understood for what  
24       it stands for.

25                    But the analysis is more about the

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1 distance between it and the '723, and there's  
2 a fair amount of distance.

3 Maybe that answers your question.  
4 There's a lot that they have in difference.

5 Q Let's focus on the distance, then.  
6 Let's see, what are the differences between  
7 the D '723 patent and the D '906 patent?

8 A Well, overall impression, as would  
9 be seen by an ordinary observer at the time,  
10 it gives a very different overall impression.

11 It's incorrect to, say, list  
12 individual little details, but in viewing the  
13 two images in different angles, there is a  
14 very different impression given by the '906,  
15 which -- which has a very, you know, smooth,  
16 rounded, clear of any kind of markings or  
17 hard edges. You know, it's got this kind of  
18 melted look to it, right, just for other  
19 conversation to put it into words, which is  
20 highly different from the impression that we  
21 get from any of the other products that I  
22 analyzed as part of this case.

23 Q So I was asking you the differences  
24 between the '723 patent and the prior art of  
25 the '906 patent, and you said there are hard

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1 edges and one is more smooth than the other  
2 and those are the differences between those  
3 two patents.

4 MR. BERKOWITZ: Objection to the  
5 form.

6 A Yeah, you definitely misstated my  
7 words.

8 But the important thing is that  
9 it's about the overall impression. And the  
10 overall impression we have from the '906 is  
11 this very kind of melted kind of feel,  
12 whereas the '73 -- were you -- sorry, I'm  
13 just checking.

14 Is it the '726 or '723? '723,  
15 correct. Whereas the '723 in particular does  
16 not give that overall same impression of it  
17 being melted.

18 Q Do they have similar overall shape?

19 MR. BERKOWITZ: Objection to form.

20 A Depends what you mean by shape.

21 Q The hourglass shape that you  
22 mentioned -- I'm sorry, I'll let you finish  
23 first.

24 A Yeah, I guess I was going to say  
25 that, you know, it's not about necessarily

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1 shape analysis of the product as a whole.

2 It's about the impression.

3 However, in my report, I did refer  
4 to the hourglass shape, for instance, which  
5 is a part of the overall impression. It  
6 helps inform the overall impression.

7 And, you know, to help answer that  
8 question, yes, they do both share as part of  
9 the overall impression an hourglass shape.

10 Q If that hourglass shape -- does the  
11 hourglass shape form an impression of the  
12 overall shape of the product?

13 MR. BERKOWITZ: Objection to the  
14 form.

15 A It's my opinion that the hourglass  
16 shape contributes to the overall impression.  
17 I think that's important. It's not the  
18 entirety of the impression.

19 Q What other attributes do you think  
20 contributes to the overall impression?

21 A Of which one?

22 Q Of the '723 patent.

23 A I believe, you know, the ordinary  
24 observer, the impression that the ordinary  
25 observer at the time, who's never seen a

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1 product like this but has knowledge of the  
2 prior art that was shown, would notice, yes,  
3 it has an hourglass shape, but also, a  
4 generally flat surface with areas to put your  
5 feet, for instance, and that it has open  
6 fenders on the side above the wheels.

7 And, you know, there are a number  
8 of things that make that overall impression  
9 and the — some of the feel of those forms  
10 that make that impression, are hard edges,  
11 defined shapes.

12 So that's the general kind of  
13 impression, and it's not limited to the words  
14 I used. I'm just trying to describe the  
15 image that we see in context to looking at  
16 the prior art that existed before.

17 Q So just to summarize what you said,  
18 you said that they both have similar  
19 hourglass shape.

20 Is that correct?

21 MR. BERKOWITZ: Objection to form.

22 A Yeah. More specifically, I said  
23 that they do both share an hourglass shape,  
24 which is part of the overall impression.

25 Q Which is part of the overall



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1 impression.

2 And the dissimilarity between the  
3 '723 patent and the '906 patent, you said,  
4 comes from the flat surface, the open fenders  
5 and the overall feel, you said, like the  
6 feeling where you look at the products.

7 A Yes.

8 Q Okay. And together with hard  
9 edges, which really are the key contributors  
10 that distinguish one -- distinguish the D  
11 '723 patent from the D '906 patent?

12 A That's more or less incorrect to  
13 take the wording so literally, but the idea  
14 is that the ordinary observer would notice  
15 differences, such as that contributes to the  
16 overall impression.

17 So the hourglass shape is still  
18 part of the overall impression of -- of both,  
19 but the overall impression is very different  
20 at the end of viewing both.

21 Q Okay. And then you think that's  
22 why an ordinary observer would not confuse  
23 the D '723 patent to the D '906 patent,  
24 despite that the hourglass shape contributes  
25 to the overall impression or the sufficient

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1       dissimilarity, including the flat surface,  
2       the fenders and the edges and the overall  
3       feelings when you look at the two patents,  
4       and that those all together contributes to  
5       the -- to the dissimilarity that the ordinary  
6       observer can distinguish?

7               MR. BERKOWITZ: Objection.

8       Objection to the form, mischaracterizes  
9       testimony.

10            A     Yeah, I think that's almost  
11       correct, but this was not -- you know, you  
12       framed this as whether the ordinary observer  
13       would be confused between these two products,  
14       which was not part of the analysis here.

15               I was just explaining how the  
16       ordinary observer would view these as being  
17       quite different, but I did not analyze, you  
18       know, the ordinary observer test as to  
19       whether these are substantially different,  
20       you know, using those official words. That  
21       was not part of the analysis.

22               What I was saying is, you know,  
23       it's my opinion that there is a lot of  
24       difference in the overall impression here.

25            Q     Are these differences substantially

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1 dissimilar?

2 MR. BERKOWITZ: Objection to the  
3 form.

4 A To conduct an official analysis, I  
5 would have to look at the prior art of the  
6 '906 to -- to understand it a lot better.

7 But my -- my opinion is that the  
8 impression is that it is -- it is really  
9 quite different, you know. I wouldn't want  
10 to use the word "substantially different"  
11 because that infers that I've conducted a  
12 full analysis on that specific item, whereas  
13 the analysis I did was using it as the prior  
14 art and not the target of the analysis.

15 I hope I wasn't too confusing  
16 there.

17 Q No, you're not confusing.

18 I think it's good that we can  
19 recognize there are differences between the D  
20 '723 patent and the D '906 patent because  
21 that's constructive, and I won't go through  
22 all the products because we have four patents  
23 and we have four products with 16 different  
24 analysis.

25 I won't ask you to do all 16 of

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1       those analysis.

2               Let's just pick one product. Let's  
3       just pick a -- product B, let's go with  
4       product B.

5               So do you think product B is  
6       substantially different from the D '906  
7       patent?

8               A     My analysis was actually on the  
9       difference between product B or differences  
10      in similarities between B and the patent, say  
11      the '723, among others.

12              Q     The D '723, okay.

13              Do you find the product B is  
14      substantially dissimilar from the D '723  
15      patent?

16              A     No, I find it substantially the  
17      same.

18              Q     Does product B have a smooth  
19      hourglass shape?

20              A     The hourglass shape that it has  
21      contributes to the overall impression. It  
22      does have an hourglass shape, yes.

23              Q     Does it have smooth lines or does  
24      it have edgy lines?

25              MR. BERKOWITZ: Objection to the

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1 form.

2 A The edgy lines that you referred to  
3 do contribute to the overall impression of  
4 the Gyroor B.

5 Q Of the Gyroor -- of Gyroor product  
6 B.

7 Well, when we look at the surface,  
8 do they have different patents and design  
9 lines on the standing pads, the two pads that  
10 you stand on?

11 A Are you -- so when you say the  
12 difference, you're talking about between the  
13 '723 and Gyroor B application?

14 Q Yes.

15 A They both share having a generally  
16 flat, you know, pronounced flat area for  
17 standing on. That's something they share,  
18 and there are individual differences when we  
19 zoom in further.

20 Q Does the D '906 patent have  
21 surfaces to stand on?

22 A The '906 patent is a much  
23 smoother -- I called it a melted rounder  
24 form.

25 It's presumed you may be able to

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1 stand on it, but it does not have a  
2 pronounced flat surface for standing on like  
3 the '723 and the accused products.

4 Q The flat surface you stand on,  
5 which part is not flat?

6 If you can point that through the  
7 pictures, it would be very helpful. If we're  
8 looking at Exhibit No. 5, we can just point  
9 to the pictures. So that will be easier.

10 A Are you referring to the '906?

11 Q No, I'm referring to the flat  
12 surface that you said is present in the D  
13 '723 patent but not in the D '906 patent.

14 I just want to ask you, which  
15 picture you looked at and made that  
16 determination.

17 A Okay. Obviously, the analysis is  
18 done on a combination of all figures, but you  
19 do see a generally flat surface and  
20 pronounced standing pads on the '723.

21 Q From which picture?

22 A Again, the analysis was done on all  
23 pictures but we can look at Figure 6, for  
24 instance, of the D '723 patent.

25 Q Which page are you referring to?

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1 A You said Exhibit 5?

2 Q Yes.

3 A We can look at page 4.

4 Q Okay.

5 A I see the rendition is a little  
6 compromised, but I'm obviously very familiar  
7 with the patent image itself.

8 But we see that the surface of the  
9 '723 has a generally flat surface and it has  
10 pronounced -- you know, when you compare it  
11 here to the '906, the '723 has pronounced --  
12 what did you call it? -- tread areas, I  
13 think, for treads.

14 So that flatness there is  
15 pronounced. It's being made very visible,  
16 and that's seen with all competitors too, but  
17 not the '906.

18 Q So you're saying the '906 patent  
19 doesn't have a flat surface to stand on?

20 A No, that's not what I said.

21 Q I'm trying to understand what you  
22 said. You said the '723 patent has a flat  
23 surface.

24 Is that flat surface also present  
25 in the D '906 patent?

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1           A     The '723 has a generally flat  
2     surface at the top, but it has these  
3     pronounced treads.

4           Q     By treads, you mean the lines, sir?

5           A     Yes. To clarify -- that's a good  
6     question. I was trying to think of the word  
7     you used, but the foot tread areas, right,  
8     those areas, the footpads, let's call it, are  
9     pronounced and we see exactly, you know, that  
10    generally flat area with the pronounced foot  
11    treads, and that is not present in the '906,  
12    for instance.

13          Q     When you say it's pronounced, are  
14    you saying that -- how is that more  
15    pronounced in the D '906 patent, because in  
16    the D '906 patent there are two flat surfaces  
17    as well?

18               MR. BERKOWITZ: Objection to the  
19    form.

20          A     Yes, I think you're assuming that  
21    they are flat surfaces there. You know, I  
22    would say it's generally flat, even on the  
23    '906. However, there are no pronounced, that  
24    is, there's no defined areas of footpads, so  
25    I have no idea.



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1                   For instance, the inventor at that  
2                   point had the inclination of having a defined  
3                   area to mark where the feet might go, whereas  
4                   the '723 does have some pronounced areas  
5                   where the feet might go.

6                   Q     So you're saying --

7                   A     I'm sorry, by pronounced, I mean  
8                   something like explicit, if that helps.

9                   Q     And it helps.

10                  And by the '906 patent, you think  
11                  people will not know where to stand on this  
12                  product?

13                  MR. BERKOWITZ:  Objection to the  
14                  form.

15                  A     That's not what I'm saying.

16                  But for instance, the '906 could  
17                  be -- as you know, we don't know what size  
18                  this is.

19                  It could be -- the whole thing  
20                  could be as big as one foot, a person's foot,  
21                  or it could be as big as a surfboard, but  
22                  there's no indication as to where one might  
23                  provide footpads in this invention.

24                  If it were bigger, like you would  
25                  have smaller footpads near the middle, but we

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1       don't know that. The designers did not have  
2       possession of an idea at that time of -- of  
3       pronouncing or explicating of something like  
4       a footpad.

5           Q     And how is that pronounced in the D  
6       '723 patent?

7           MR. BERKOWITZ: Objection to the  
8       form.

9           A     We do see some form of area that  
10       has been outlined that we can infer is for  
11       standing on, that we're calling footpads.

12                But really, in doing the  
13       comparison, we're seeing a pronounced area,  
14       an explicit defined area on this and on the  
15       accused products that is absolutely not  
16       present in the prior art. It's entirely new.

17           Q     So you're saying the lines on the  
18       standing pad marked where people should  
19       stand, and without the lines, people would  
20       not know where to stand on a hoverboard?

21           MR. BERKOWITZ: Objection to the  
22       form.

23           A     That's also not what I'm saying.

24                But what I am saying is, that the  
25       inventors of the '723 patent did explicate

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1 certain zones or areas that were not  
2 pronounced or explicated in the prior art  
3 '906. These areas, you and I, today, are  
4 inferring calling footpads.

5 They may all be something  
6 different, but yes, they are visibly present  
7 and contribute to the overall impression.

8 Q And to your understanding, was that  
9 the first time that this defined area for  
10 standing was ever disclosed on the hoverboard  
11 products? Was that --

12 MR. BERKOWITZ: Objection to the  
13 form.

14 A That's not what I said, but when  
15 comparing to the '906, the '906 does not  
16 disclose that as an idea and they have not  
17 explicated that.

18 I believe in the further prior art  
19 of items of other forms, there were some  
20 areas that might represent explicating  
21 footpads or something similar, but not on the  
22 '906.

23 Q I see.

24 So you agree, although that was not  
25 included in the '906 patent, that was

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1 disclosed in some other prior art?

2 MR. BERKOWITZ: Objection to the  
3 form, mischaracterizes testimony.

4 A Yes, almost. It was not part of  
5 the '906 but there exists other prior art  
6 that I analyzed that had areas that may be  
7 defined as -- as footpads. However, not  
8 in -- not giving the same overall impression.

9 Q Overall impression of the standing  
10 footpads?

11 MR. BERKOWITZ: Objection to the  
12 form.

13 A Overall impression of the object as  
14 a whole. Thank you for allowing me to  
15 clarify.

16 Q No problem.

17 MR. CHENG: It's almost 1:00.  
18 Let's take a lunch break.

19 MR. BERKOWITZ: Okay.

20 (Luncheon recess taken.)

21 Q Mr. Hatch, did you communicate with  
22 your counsel during the break?

23 A No, I did not.

24 Q And let's get back to the report.

25 Mr. Hatch, you mentioned that the

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1 standing pad was present, the flat area of  
2 the standing pad was present in the D '723  
3 patent but not in the prior art.

4 Is that correct?

5 A I said the -- one of the things  
6 that contributes to the overall impression  
7 are the pronounced areas that we're calling  
8 standing pads that are not pronounced in the  
9 '906 in such a way.

10 Q Are you talking about appearance  
11 when you're talking about pronounced?

12 A Yes, yes. I also use the word  
13 explicated, but there's -- you know, the  
14 inventor at the time was clearly marking that  
15 area and designating it for something that  
16 they presume is the feet, which the '906 did  
17 not.

18 Q In your opinion, an ordinary  
19 observer would not know the area for feet in  
20 the '906 patent?

21 MR. BERKOWITZ: Objection to form.

22 A The ordinary observer, viewing  
23 '906, would not be called attention to a  
24 particular area on that generally flat  
25 surface for any specific reason.

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1           Q    When we're talking about  
2           appearance, what do you consider as  
3           appearance? Or let's use the more correct  
4           term, the ornamental aspect.

5                   What do you consider as ornamental  
6           in a design patent?

7                   MR. BERKOWITZ: Objection to form.

8           A    I guess we talk about the  
9           impression that the ornamental appearance  
10          makes and that's important.

11                   In this particular case, say in the  
12          '723, the ornamental appearance is -- is  
13          claimed and shown using solid lines and  
14          everything on that contributes in some way to  
15          the overall impression.

16          Q    I didn't ask -- I didn't ask  
17          overall impression. I asked what do you  
18          consider as ornamental.

19                   MR. BERKOWITZ: Objection to form.

20          A    Yeah, I -- I was telling you about  
21          what I consider ornamental to be in this  
22          case, which is exactly what we're seeing as  
23          the claimed design.

24                   You know, the product as a whole  
25          shows an ornamental design as shown.

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1           Q    Do you understand -- do you  
2           understand what is considered a functional  
3           aspect of a design pattern?

4           A    Yes, the question about  
5           functionality is quite different from what  
6           you asked before, but functionality, for  
7           instance, there's a certain utility that is  
8           implied by an ornamental object.

9                   And in infringement analysis, we do  
10          try to identify whether certain aspects are  
11          driven primarily by functionality or not.  
12          And the functionality implies that -- I'm  
13          sorry, a long-winded answer again.

14                 Because functionality is a big  
15          thing. It's -- you know, if it's driven by  
16          functionality, if a certain aspect of the  
17          design is driven by functionality rather than  
18          purely ornamental, that means, you know, if  
19          it looked different, it wouldn't necessarily  
20          provide the same function, therefore, it's  
21          primarily functional.

22                 In this case, we are looking at an  
23          ornamental design.

24           Q    Do you know functionality and the  
25           functional aspects of a design are two

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1 different concepts?

2 MR. BERKOWITZ: Objection to the  
3 form.

4 A It depends what you mean, whether  
5 you're talking about infringement analysis or  
6 invalidity. That plays a different role in  
7 there or even in trade dress, so yes, there  
8 are differences.

9 Q In the context of design patent  
10 infringement analysis.

11 A And the question being, do I  
12 understand there may be a difference between  
13 functional elements and functionality in  
14 infringement analysis, is that your question?

15 Q In infringement analysis context,  
16 do you understand the functionality and the  
17 functional aspects of a design are two  
18 different concepts?

19 MR. BERKOWITZ: Objection to the  
20 form.

21 A No, I understand there's a  
22 difference, but what's -- yes, because for  
23 instance, an ornamental part of a design may  
24 have a function.

25 They have functionality, but



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1 functional aspects might -- might be talking  
2 about certain parts that may be or may not be  
3 driven by function.

4 Q Are there any parts in a hoverboard  
5 patent, let's say the D '723 patent, driven  
6 by function?

7 MR. BERKOWITZ: Object to the form.

8 A Did you say are there any reports,  
9 is that what you said.

10 Q No.

11 Are there any parts in the D '723  
12 patent driven by function?

13 MR. BERKOWITZ: Objection to the  
14 form.

15 A My understanding is that what we  
16 see is not primarily driven by function, that  
17 the claimed design is ornamental.

18 Q Is a claimed design ornamental  
19 because only ornamental aspects are claimed  
20 design?

21 A Is that a question?

22 Q What I'm asking you is, is there  
23 a -- functional aspects in the -- in the  
24 claimed design here?

25 MR. BERKOWITZ: Objection to the

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1 form.

2 A The claimed design is of an  
3 ornamental design. The -- it depicts  
4 something that would have certain utilitarian  
5 use, i.e., functional usage, however, they  
6 are primarily ornamental in my analysis.

7 Q And what are those functional  
8 utility things that would be in the design  
9 patent?

10 MR. BERKOWITZ: Objection to the  
11 form.

12 Q And let's use the D '723 patent as  
13 an example.

14 A Okay. So from the patent, it can  
15 be inferred that the utility or the function  
16 of this claimed design is of a self-balancing  
17 vehicle of some kind because that's the title  
18 of the patent.

19 There are no other descriptions to  
20 call out any particular functions of the  
21 claimed design. So if you're asking about  
22 the claim of the claimed design, I think  
23 that's about it.

24 Q Well, I guess you still haven't  
25 been very clear as to your understanding of

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1 ornamental aspects of this claimed design.

2 So you're saying all claim designs  
3 are ornamental in the D '723 patent?

4 A Yes, all claim parts of the design  
5 of the '723 patent are primarily ornamental.  
6 That is correct, yes.

7 Q When you say "primarily  
8 ornamental," are you indicating part of them  
9 or not?

10 A I'm sorry, I didn't catch the last  
11 bit. Am I indicating --

12 Q Part of the claimed design are not  
13 ornamental?

14 A No. Because I was talking about  
15 the claimed design as a whole, which is  
16 important in infringement analysis to look at  
17 the object as a whole.

18 And what we see there, all of the  
19 claim parts, as a whole, relate to ornamental  
20 design. They are not primarily functional,  
21 for instance, because it could have a very  
22 different appearance and still potentially  
23 provide the same function --

24 Q So you just mentioned --

25 A -- on a self-balancing vehicle.

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1           Q    Yes.

2                    So you just mentioned function, so  
3       it does serve function via on the line  
4       function can be served in different design,  
5       that's what you're saying?

6           A    That's correct.

7                    And the function that I explained  
8       before, its function as a self-balancing  
9       vehicle and could have a different ornament.

10          Q    And do you think that the D '906  
11       patent have different ornamental or different  
12       ornaments from the D '723 patent?

13          A    The '906 also claims an ornamental  
14       design that is different from the '723  
15       patent, yes.

16          Q    And do you think the product B also  
17       served the same function with a different  
18       ornament in this design?

19                   MR. BERKOWITZ:  Objection to form.

20          A    I don't know about the same  
21       function.

22                   What function are you referring to  
23       with that particular product?

24                   Because with that product, it's --  
25       it's more specific about what function it

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1 serves.

2 Q What function?

3 You mentioned the function. You  
4 said the function can be served with  
5 different designs.

6 So I'm asking you, how the function  
7 in B -- so what's the function in the D '723  
8 patent does the design serve?

9 A The claimed design function is --  
10 is shown as being for a self-balancing  
11 vehicle. So that's its overriding function.

12 Product B falls under that  
13 category, but it -- it limits itself in the  
14 functions it describes. It's specifically a  
15 hoverboard design.

16 Q So is product B a hoverboard under  
17 the same concept as a hoverboard as a  
18 self-balancing vehicle?

19 MR. BERKOWITZ: Objection to the  
20 form.

21 A A hoverboard could be considered a  
22 self-balancing vehicle.

23 Q And does product B have a function  
24 of a hoverboard or self-balancing vehicle?

25 A It serves as a hoverboard, which is

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1 a type of a self-balancing vehicle, yes.

2 Q And is that on the line function  
3 served through the same design as the D '906  
4 patent or D '723 patent or served through a  
5 different design?

6 MR. BERKOWITZ: Objection to the  
7 form.

8 A The function of a self-balanced  
9 vehicle, as we understand, can be served  
10 through -- this was part of my report -- can  
11 be served through other ornamental designs,  
12 such as and includes product B.

13 Q And how is product B's ornamental  
14 design different from -- different from the D  
15 '723 patent?

16 MR. BERKOWITZ: Objection to the  
17 form.

18 A It -- it's -- the ornamental design  
19 is -- is very similar of scores, and I guess  
20 you're asking my function before, but now  
21 you're talking about ornamental design.

22 You know, it's very similar, but  
23 there are differences in smaller details.

24 Q Can you highlight those differences  
25 for me?

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1           A    As I've shown you in my report, it  
2           shares a lot of commonality and we -- we look  
3           at that through the eyes of an ordinary  
4           observer in context of the prior art.

5           Q    If you --

6                   MR. BERKOWITZ: You have to let him  
7           finish.

8                   MR. CHENG: That's fine. I thought  
9           he was finished.

10          A    So rather than looking at the  
11          individual differences, which is the  
12          incorrect analysis in this case, we look at  
13          the design as a whole and compare them.

14          Q    So you only look at the design as a  
15          whole.

16                   Do you still look at the design in  
17          the details?

18          A    The design in details -- you know,  
19          the details of the design, the ornamental  
20          details of the design do contribute to the  
21          overall impression.

22                   And we -- we look at, okay, what is  
23          the contribution, what -- what contributes  
24          substantially to that whole world impression  
25          and if there are small details like screw

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1 holes that we believe the ordinary observer  
2 would not, that would not affect the overall  
3 impression to the ordinary observer, and  
4 those have a lesser effect on the overall  
5 impression.

6 Q And again, I -- well, I think the  
7 defendants have been much better image in the  
8 screw hole but the question is, can you  
9 highlight the differences between product B  
10 and the D '723 patent for me?

11 A The differences, again, in context  
12 of the '906, which is the --

13 Q That's not the question.

14 A We can do it the incorrect way, if  
15 you want.

16 Q That's not the question that I  
17 asked.

18 I'm asking if you compare product B  
19 with the D '723 patent, can you highlight the  
20 differences between the product B and the D  
21 '723 patent?

22 MR. BERKOWITZ: Objection to form.

23 A Maybe, you know, to do that, we  
24 could use one of my -- my tables, right?

25 So we can look at it officially so



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1 I can answer your question.

2 Q Go ahead.

3 A I'm thinking where -- you're  
4 talking about '723 compared to B.

5 So if we look at Exhibit 5, and  
6 that would be page 1 to 5. And to zero in on  
7 one page, I guess we can look at page 4  
8 because we get an angle view of it.

9 We see the '723 and product B and,  
10 of course, the prior art.

11 So just to clarify, before I do  
12 this, you are asking about the viewpoint of  
13 the ordinary observer in this.

14 Is that correct?

15 Q Well, I guess that comes to the  
16 question. You have to define the ordinary  
17 observer for me first.

18 A Oh. Well, the ordinary observer  
19 defined, obviously, in my report, which I can  
20 refer to here.

21 The ordinary observer in  
22 infringement analysis, as you know, is  
23 defined as the ordinary purchaser. And we  
24 look at the ordinary observer to understand  
25 the level of acuteness.

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1                   And in this particular case, we  
2           consider the ordinary observer, i.e., the  
3           purchaser, to be the consumer user or, say,  
4           the parent of the user, if it's a child who  
5           is choosing and purchasing this product,  
6           whether they're on social media or online or  
7           some brick and mortar store.

8                   So they come across this and choose  
9           to purchase this. I think that answers your  
10          question to define an ordinary observer in  
11          this case.

12                 Q     Can you point to the section where  
13          you define this ordinary observer in your  
14          report?

15                 A     Sure.

16                   I believe it's -- which exhibit is  
17          the initial report?

18                 Q     It's Exhibit 3.

19                 A     Yes, thank you.

20                   So it is on page -- it's page 8.  
21          There's a section -- I'm sorry, it's not page  
22          8.

23                 Q     Is it page 6?

24                   If you go by the cover, it's page  
25          8, but if by the line, the page number, it's

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1 page 6.

2 A Yes, that's correct.

3 I have three paragraphs about a  
4 definition of an ordinary observer generally.

5 The third paragraph is where I  
6 state specifically here, in my deposition, of  
7 the ordinary observer.

8 Q Thank you.

9 If you can read that portion that  
10 you defined ordinary observer in this case  
11 would be very helpful.

12 A It is my opinion that an ordinary  
13 observer in this case is the typical  
14 purchaser of hoverboards, i.e., a consumer  
15 user or the parents of a user each having  
16 little or no experience purchasing  
17 hoverboards.

18 The ordinary observer encounters  
19 products like the claimed designed, online  
20 stores, television and entertainment media  
21 and social media and purchases them using  
22 online stores or from brick and mortar  
23 stores, like Best Buy or Walmart.

24 Q So a typical, ordinary observer may  
25 have knowledge of the prior art?

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1           A     Yes, a typical, ordinary observer  
2     would have knowledge of the prior art, the  
3     relevant prior art.

4           Q     And does a consumer have little or  
5     no experience purchasing hoverboards indicate  
6     that person's knowledge of hoverboards?

7                     MR. BERKOWITZ: Objection to the  
8     form.

9           A     So a real life consumer, which I  
10    think you're referring to, it's my opinion  
11    that they would not have substantial  
12    knowledge of the industry as a whole, which  
13    is expected here.

14                    They are an ordinary purchaser with  
15    ordinary acuteness to hoverboards and don't  
16    necessarily have years of experience  
17    designing or understanding the differences,  
18    the nuances of hoverboards.

19           Q     And why did you pick this  
20    purchaser, a real life purchaser for this  
21    particular case?

22           A     It's my understanding that that's  
23    the majority, the high majority of people who  
24    buy these products and products like this,  
25    based on prior experience with this category

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1       and similar categories.

2           Q     Although this real life purchaser  
3       may not have other knowledge of the prior  
4       arts and the products in the industry,  
5       it's -- and that was the question -- even  
6       though you think -- even though you know this  
7       purchaser in real life may not have all the  
8       knowledge about the prior arts and the  
9       products in the industry?

10           MR. BERKOWITZ: Objection to the  
11       form.

12           A     Yeah, my understanding is that the  
13       consumer in real life would not have  
14       knowledge of all of the prior art or all of  
15       the competing hoverboards, that is correct.

16           Only the hypothetical ordinary  
17       observer is considered to have knowledge of  
18       the prior art.

19           Q     And you think this purchaser in  
20       real life, as defined in your report, fits  
21       better in the situation?

22           A     Fits better than?

23           Q     Than the hypothetical ordinary  
24       observer in this case.

25           A     That's not what I said.

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1                   We look at the purchaser in real  
2           life to understand the level of acuity  
3           they -- the level of attention that they pay  
4           to viewing the product, but the hypothetical  
5           ordinary observer is actually the operational  
6           construct, if you will, that we use for the  
7           analysis.

8                   But we apply the level of attention  
9           from the -- the purchaser to the hypothetical  
10          ordinary observer. So it's not one or the  
11          other. One helps define the other.

12                Q     Which define the other?

13                   I'm a bit confused here.

14                   So are you saying you're using two  
15          standards or you're using one standard here?

16                A     The standard for the hypothetical  
17          ordinary observer is that we apply the level  
18          of acuteness of the purchaser.

19                   And so when I say one helps inform  
20          the other, it's knowing the level of  
21          acuteness of the purchaser. The real life  
22          purchaser helps us inform the level of  
23          acuteness that an ordinary observer would  
24          pay.

25                Q     The hypothetical ordinary observer

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1 would pay?

2 A Yes, yes.

3 Q And so, you agree in this case, a  
4 hypothetical ordinary observer will have  
5 knowledge of all the prior art?

6 MR. BERKOWITZ: Objection to the  
7 form.

8 A Yes, unlike the purchaser in real  
9 life, they have knowledge of the relevant  
10 prior art.

11 Q But however, in this case, you're  
12 saying, it is my opinion that an ordinary  
13 observer in this case is the typical  
14 purchaser of hoverboards.

15 So should this case use the  
16 standard of a hypothetical ordinary observer  
17 or use the standard that you define here as  
18 the typical purchaser of hoverboards in your  
19 own words about purchasing in real life?

20 A It's kind of the same thing. You  
21 may be misunderstanding this, but when we  
22 define -- in these cases, when we define who  
23 the ordinary observer is, it's a hypothetical  
24 person, it's based upon this real life  
25 purchaser.

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1                   And that's why it's phrased in that  
2           way, that the ordinary observer in this case  
3           is the typical purchaser of hoverboards.  
4           That's the typical phraseology but it doesn't  
5           mean that these are competing aspects.

6           Q     So you agree a hypothetical  
7           ordinary observer has knowledge of all the  
8           prior arts, however, here, you define this  
9           ordinary observer in this case as a typical  
10          purchaser who has limited knowledge of all  
11          the prior arts and the products in the  
12          industry, how do you reconcile the gap  
13          here?

14                   MR. BERKOWITZ: Objection to the  
15          form.

16          A     I think you're twisting things a  
17          little here, but as I said before, it's the  
18          level of attention that we actually use from  
19          the purchaser in real life to help us inform  
20          the ordinary observer.

21                   It's normal to phrase it this way,  
22          that that purchaser is the ordinary observer.

23                   But this hypothetical impression of  
24          the ordinary observer that we use is not the  
25          purchaser from real life, but one who has



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1       that level of attention but is informed by  
2       the prior art. And that's the hypothetical  
3       version of the ordinary observer.

4           Q     So what you just stated, is that  
5       included in your report?

6           MR. BERKOWITZ: Objection to the  
7       form.

8           A     I do describe, for instance,  
9       further up, the definition of the ordinary  
10      observer, you know, in the previous  
11      paragraphs, and how it's -- how it's  
12      applicable when doing infringement analysis.  
13      I believe it's clear.

14           I believe it is in the report, to  
15      answer your question, that we are defining  
16      who we think this ordinary observer  
17      represents, and we use this ordinary observer  
18      later in the document as a viewpoint.

19           So I think that's a yes to your  
20      question.

21           Q     So I'm reading the section that you  
22      tried to define the ordinary observer.

23           At the end of the paragraph you  
24      mention the ordinary observer is also the one  
25      who's aware of the number of closely similar

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1 prior art designs and conversant with the  
2 prior art.

3 Just to be clear, do you think the  
4 hypothetical ordinary observer should know  
5 all the prior arts or just to the number of  
6 closely similarly prior art designs?

7 MR. BERKOWITZ: Objection to the  
8 form.

9 A My understanding is that they  
10 have -- I can't define exactly where the line  
11 is there, but my understanding is they have  
12 knowledge of the relevant prior art, and  
13 certainly relevant in this case would be  
14 prior art that's cited on -- on the -- by the  
15 patents themselves.

16 I believe it's often debated as to  
17 exactly what falls under relevant and that's  
18 not something for me to argue, but what is  
19 very clear, though, is that everything on the  
20 patents is certainly relevant to this case.

21 Q And now, let's go back to the parts  
22 that you mentioned. Go back to the Exhibit  
23 No. 5 where you compared the products,  
24 accused products, the patents-in-suit and the  
25 prior art.

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1                   We were trying to highlight the  
2           differences between product B and the D '723  
3           patent.

4                   And can you go through the  
5           differences with us?

6           A     Yes.

7                   So if we look at just for this  
8           conversation, obviously, the analysis is done  
9           looking at all the views at the same time.

10                  But if we look at page 4 of the  
11           exhibit, five that you mentioned, you know,  
12           where we see an angle view of both?

13           Q     Umm-hmm.

14           A     To define the differences and the  
15           reason we went around this way is, as I said,  
16           we need to be looking through the eyes of the  
17           ordinary observer, and so the ordinary  
18           observer at this time, if they -- if they  
19           have knowledge of the '906, then that helps  
20           inform them what they -- what becomes  
21           prevalent to them about the impression that  
22           they get, right, the ornamental design.

23           Q     Umm-hmm.

24           A     And that helps them understand,  
25           okay, well, what's similar and what's

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1 different, okay?

2 Q What's different, yeah. Okay.

3 A Okay. So we see lots of  
4 similarities, particularly with the '906 in  
5 mind. We do see some smaller details, when  
6 we zoom in a little bit.

7 For instance, the '906 has a fender  
8 skirt, like a sort of closed area around the  
9 wheels. Whereas, in the '723 and product B,  
10 we see that they both have an open fender.

11 But there are differences in the  
12 way that they have that open fender that are  
13 both different and quite far away from the  
14 '906, but there are differences in the way  
15 that they have that.

16 Product B, for instance, has a  
17 little less material in the way that it's an  
18 open fender.

19 The '723 has a little bit more  
20 material as it wraps around, but it's still  
21 above the wheel. So it's still open and  
22 giving visibility to the wheel. So there's a  
23 difference when we drill down into a smaller  
24 level there.

25 Again, with the context of the

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1 '906, one of the biggest differences they  
2 both have, from the '906, is that they have  
3 these pronounced areas of the foot tread  
4 areas and they have different approaches.  
5 They both have foot -- pronounced foot  
6 treads, but they have differences in the way  
7 that they address that.

8 Product B has angled lines in  
9 different sort of angled lines that the '723  
10 has in the way that it pronounces those  
11 things, but they're very similar because the  
12 '906 doesn't even have any pronounced at all.

13 So again, there are differences at  
14 a much lower level of -- of detail. These  
15 differences, you know, do contribute to the  
16 overall impression.

17 Staring at the two things, an  
18 ordinary observer will notice differences,  
19 but of course, this test is not about whether  
20 we know just differences. It's about whether  
21 we believe the product B, the D '723, are  
22 closer to each other than the '906, you know,  
23 with view of the '906, and they are.

24 Sorry for the long answer, but you  
25 wanted a list of differences.

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1 Q That's perfect.

2 I mean, I want you to show me the  
3 differences or highlight the differences, and  
4 I do thank you, almost got it right, except  
5 from -- you know, when you compare A to B,  
6 you notice the differences, anyone does,  
7 where A is different from B, you certainly  
8 know the differences.

9 And I think the prior art comes  
10 into play that will enhance the differences  
11 between A and B.

12 Do you agree? I mean --

13 A No, I think --

14 MR. BERKOWITZ: Objection to the  
15 form.

16 A -- in this particular case, the  
17 '906 does inform us, help understand what are  
18 the differences. The '906 says, okay, this  
19 is the world that happened before the  
20 invention of the '723.

21 You are saying that this is the  
22 closest prior art.

23 So if '906 happens and some time  
24 after that the '723 happens, then -- then  
25 yes, I understand what got invented at the

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1 time of the '723.

2 And then, of course, I ask myself,  
3 well, if product A now comes along, is that a  
4 huge step from '723 or not considering the  
5 big step that -- the big differences between  
6 '906 and the '723.

7 And it's really quite clear, you  
8 know, and that's the analysis that's going on  
9 here.

10 I cannot see how someone can think  
11 that the melted form of the '906 can  
12 somehow -- somehow come between the '723 and  
13 product A or product B.

14 Q Product A and product B, what do  
15 you mean by product A and product B?

16 A I'm referring to the accused  
17 products, Gyroor product A and Gyroor product  
18 B.

19 Q But you're not comparing product A  
20 to product B?

21 A No. I was comparing them to the D  
22 '723 and comparing them to the '906 and  
23 seeing the substantial gap. I guess, between  
24 the '723 and the '906, but that sort of size  
25 gap, those huge differences are much bigger

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1       than the gap that '723 has to product A.

2           Q     Well, let's just focus on one  
3       product, and let's use product B as an  
4       example.

5           A     Sure.

6                     I could repeat the same for that.  
7       You brought up product A, so I was just  
8       answering that question.

9           Q     I didn't, but I think you first  
10      mentioned product A, but let's use product B  
11      as an example here.

12          A     Sure.

13          Q     First, I would like to ask you  
14      about the -- let's take a look at page 1. I  
15      think that is the top view of the products,  
16      accused products of the patents-in-suit, D  
17      '723 and the prior art D '906.

18          A     Yes, I'm looking.

19          Q     Let me share my screen with  
20      everyone so when I refer to certain aspects  
21      you understand what I'm saying here.

22                     Can you see my screen?

23          A     Not yet.

24                     Oh, yes, I can.

25          Q     And can you see the little mouse



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1 I'm using?

2 A Yes.

3 Q Okay. So this is product -- this  
4 is the D '723 patent. This is product B and  
5 this is the '906 patent?

6 A Yes, from one particular view.

7 Q From the top view, you're correct.

8 Let's see. This product A --  
9 sorry, this top view of D '723 patent have an  
10 hourglass shape.

11 Do you agree?

12 A Yes, it -- you know, yes, it does  
13 have a generally hourglass shape.

14 Q And do you think it's a similar  
15 shape as the D '906 patent?

16 A The '906 in this view has an  
17 hourglass shape as well and there are  
18 similarities in its hourglass shape.

19 Q And do you see that the connecting  
20 portion for product B, which I'm pointing  
21 here, has a more straight or edging curve  
22 than both of them?

23 Let me enlarge it a little bit.

24 A You may need to zoom in. I know  
25 the area you're talking about, straight or

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1 edgy?

2 Q Umm-hmm.

3 A Can you define what you mean by  
4 straight or edgy?

5 I see there is a straight part in  
6 the area.

7 Q In the middle, exactly.

8 A On all three, right, the '906 and  
9 Figure 1, too?

10 Q I would say '906 is more smooth.  
11 There's no clear --

12 A Are you talking about the straight  
13 you're alluding to?

14 You used the word "straight." So  
15 there's a straight portion in the middle,  
16 which I see when we move this.

17 Q For product B?

18 A The '906, right.

19 Q And can you see that the cover  
20 covers, you know, less than half of the  
21 wheels here on both sides?

22 A On the top view of the --

23 Q For product B.

24 A Yeah, you're talking about the  
25 fender, right?

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1           Q    I'm talking about the fender or the  
2           wheel cover, if that's easier.

3                   And can you see -- you cannot say  
4           the same for D '723 patent.

5                   Is that correct?

6           MR. BERKOWITZ:  Objection to the  
7           form.

8           A    We see in this particular view, in  
9           Figure 1, we only see some of the wheel, and  
10          in product B we see a little bit more of the  
11          wheel.

12                   So there's a difference which I  
13          described earlier.  They both have open  
14          fenders but there's a little less material on  
15          product B.

16          Q    I would say a lot less material.  
17                   Do you agree?

18          MR. BERKOWITZ:  Objection to the  
19          form.

20          A    In the light of the '906, which  
21          almost completely covers the wheel --

22          Q    Not from the top view.  You can't  
23          tell that.  I mean, the top view is similar.

24          MR. BERKOWITZ:  Objection to the  
25          form.

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1           A     Yeah, sure.

2                     In the top view, we only see some  
3     of the wheel, but we see it only partially  
4     covers the wheel, however, the analysis is  
5     not done in singular views.

6           Q     Well, we're going to -- we're going  
7     through them one by one. So right now, we're  
8     just looking at the top view. As you  
9     mentioned before, the design for the standing  
10    pads are different.

11                    Can you see that there are a lot of  
12    different angles and shapes for the product  
13    B?

14           A     To the '906?

15           Q     To the '906 and to the D '723  
16    patent. You can't possibly argue that they  
17    are similar design.

18                   MR. BERKOWITZ: Objection to form.

19           A     Yes, the -- you know, the '906 has  
20    no pronounced pads. And on B, we do see  
21    pronounced pads and it is different. It has  
22    differences to the '723 pronounced pads in  
23    that it has what you call angular forms.

24                    Yes, absolutely. When we zoom in  
25    like this, we can identify the differences,

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1       yes.

2           Q     Okay. Are they different in  
3       shapes?

4           A     What shapes? Like the -- you're  
5       talking about the pronounced --

6           Q     I'm looking at that here.

7           A     Yes.

8           Q     So we were talking about the  
9       appearance.

10                   What is the appearance of the pads  
11       here?

12           A     They're generally flat shape with a  
13       pronounced area that we're calling footpads,  
14       which is what we see on product B and not on  
15       the '906.

16                   So there are differences. You  
17       know, to your point, there are definitely  
18       differences, particularly when we look at the  
19       inner lines, you know, the inner details of  
20       those printouts for footpads.

21           Q     And --

22           A     And the prior art -- I'm sorry,  
23       Robin. I was delayed with my continuation.

24                   You know, the point being that the  
25       '906 doesn't even have -- it's not even in

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1 the ballpark. It's not at the table of  
2 pronounced footpads.

3 So the details in between those,  
4 it's only making the '906, you know, run out  
5 the door. It's highlighting the bigger  
6 differences that these have to the '906.

7 Q But we're talking about the  
8 ornamental aspect.

9 A Umm-hmm.

10 Q So when you're talking about  
11 ornamental, it's not -- you know, you have to  
12 be specific.

13 Are these --

14 A Yes.

15 Q There are lines, shapes, shades,  
16 curves.

17 So what part of the appearance  
18 you're referring to?

19 MR. BERKOWITZ: Objection to form.

20 A I'm referring to the impression of  
21 the product as a whole, and here we were  
22 talking about the pronounced footpads and the  
23 ornamental way that they are described as --  
24 you know, as being pronounced on the design.

25 So you're correct, you know, we are

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1        talking about the ornamental. I certainly  
2        wasn't talking about the function.

3            Q     Well, I think -- it sounds like  
4        you're talking about function.

5                    You're saying it's here, it's not  
6        here. It's more the concept rather than the  
7        appearance.

8                    So are you talking about the  
9        concept of having lines, having shapes or are  
10       you talking about the actual ornamental  
11       features such as the shape, the curve?

12            A     I don't understand what you're  
13        saying.

14                    I'm talking about the impression  
15        that the visual gives us, which is, of  
16        course, about the ornamental impression  
17        rather than the concept.

18            Q     And --

19            A     Go ahead.

20            Q     And now I'm moving to page number 2  
21        of the report.

22                    And as we were discussing the '723  
23        patent and the product B and the '906 patent,  
24        and can you tell that in the middle of the  
25        hoverboard, the '906 patent is more raised

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1 slightly in the middle of the hoverboard, as  
2 I'm pointing back with my mouse here?

3 A Yes.

4 Can you zoom in a little just to be  
5 sure?

6 Q Yes.

7 So as the mousing is pointing, can  
8 you see this part that's slightly raised in  
9 the middle?

10 A Yes, that's right.

11 I do see that the top surface of  
12 that hoverboard, the '906, is generally flat,  
13 but it does raise a little in the middle that  
14 you were pointing out, yes.

15 Q And the '723 also has the slightly  
16 raised in the middle portion?

17 A It looks like it might be the same  
18 sort of level as the footpads on the left and  
19 right, but, you know, it's generally pretty  
20 flat there.

21 Q Yeah, I think maybe because the --  
22 I think because --

23 A I don't know if you want to look at  
24 that level of detail.

25 Q But no, it mentions a poor quality,



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1 I think, in your report. Let me see if I can  
2 pull the actual patent out.

3 MR. CHENG: We'll mark this as  
4 Exhibit No. 7.

5 (Above-mentioned document marked  
6 for Identification.)

7 Q Mr. Hatch, can you open that  
8 document?

9 A Yes.

10 Do you want me to screen share  
11 or --

12 Q No, I will do the screen share.

13 A Okay.

14 Q Can you see my screen?

15 A Yes.

16 Q And can you see that's Figure 3 of  
17 the '723 patent?

18 A Yes, that's correct.

19 Q And can you see that the middle of  
20 this '723 patent is raised slightly in the  
21 middle?

22 MR. BERKOWITZ: Objection to the  
23 form.

24 A It ends up being about the same  
25 height as the footpads on the sides.

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1 Q So you disagree with me?

2 A I think we see it -- if you  
3 actually draw a line there between the  
4 footpads, you'll see it's the same height,  
5 but not this level of scrutiny.

6 Not only is it correct, but we  
7 shouldn't be analyzing one particular view  
8 for something that is a matter of millimeters  
9 between the footpads, the distance between  
10 the footpads, you'll see it's the same  
11 height.

12 Q Of course, it's easier just to  
13 attribute everything to the overall  
14 impression, but to understand how this  
15 overall impression formed, we have to go  
16 through some of the details.

17 Let's also take a look at the  
18 thickness of the wheels.

19 Do you agree that the wheels of  
20 product B are significantly thicker than in  
21 the D '723 patent?

22 A So comparing the wheels, my  
23 understanding is that the wheels are  
24 unclaimed and so in this analysis, we're not  
25 comparing the thickness of wheels.

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1                   If you zoom in, you'll see that  
2           there's a lot of breaking lines there. That  
3           being said, of course, you know, they --  
4           they're pretty thick wheels especially when  
5           compared to the '906.

6           Q     Oh, I'm looking at the Exhibit 7.

7                   I think that broken thing is just  
8           the design of the wheel.

9                   So you're saying the wheels are not  
10          claimed in the D '723 patent?

11          A     I believe your experts alluded to  
12          that as well, but we see that there are  
13          broken lines there, if you want to look. The  
14          patent is there, but there's lots and lots of  
15          broken lines.

16          Q     I'm enlarging the picture here.

17                   Are you referring to the cover of  
18          the wheels -- not the cover, but how do you  
19          say that, the most outside portion of the  
20          wheels with the dotted line or are you  
21          talking about the entire wheel in broken  
22          line?

23          A     Specifically, the wheel tread,  
24          which I think is what you're referring to.

25                   The hub is certainly also

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1 unclaimed, but you can see the tread is also  
2 made up of broken lines, the view you have on  
3 the screen right now.

4 Q I see.

5 So you're saying the entire tire or  
6 the wheel does not form part of the claimed  
7 design?

8 MR. BERKOWITZ: Objection to the  
9 form.

10 A In the '723, it's shown as  
11 unclaimed.

12 Q As unclaimed?

13 A Yeah.

14 Q Okay.

15 A However, the '906 has very skinny  
16 wheels.

17 Q It's also unclaimed, I think.

18 A And what we see in the '723 and all  
19 the other products here, product A through E,  
20 are thick tires, not skinny, like on the  
21 '906.

22 However, it is unclaimed anyway, so  
23 that's not necessarily a moot argument.

24 Q Can you tell from the side view the  
25 fender are pointing up, which is

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1 significantly different from the fender or  
2 the wheel cover that was in the D '723  
3 patent?

4 A Yeah, not only in this view, but in  
5 other views you do see differences between  
6 the open fenders, certainly and, you're  
7 correct. On B, it looks like they go up.  
8 And on the '723, the fender, in the same  
9 area, the same type of fender also goes up.

10 The difference being on B that it  
11 doesn't return back down again, so it's the  
12 last bit of the fender that reveals a bit  
13 more wheel.

14 Do you see that?

15 Q Yes. I think the angle was also  
16 different.

17 A My understanding is that the style  
18 of that curve is very, very similar, but of  
19 course, on B it cuts off.

20 Again, we're looking at the nuance  
21 differences when the '906 there has a closed  
22 fender. There's this fender skirt that goes  
23 way down.

24 Q Well, from the front view, which is  
25 what we're looking at, that looks more

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1 similar than the fender in product B that  
2 goes up with a different angle.

3 A If it were a correct analysis to  
4 identify differences in singular views only,  
5 I think you're correct, however the analysis  
6 that was done is the design as a whole, and  
7 we know that the '906 has a substantially  
8 different looking fender, you know.

9 Q I mean, we are identifying them as  
10 a whole, but you can't take the whole thing.  
11 I mean, one thing from my meditation  
12 practice, I -- again, at one point you can  
13 only focus on one aspect of a matter. So  
14 that's why we're going through them page by  
15 page to get a better understanding of that.

16 Now I'm moving to the third page,  
17 which shows the bottom view of the item. And  
18 again, if I enlarge it, I don't know if  
19 it's -- the quality of the picture is good,  
20 can you see that there are -- well, first, I  
21 think compared with the D '723 patent and the  
22 D '906 patent, they both have hourglass shape  
23 from the bottom view.

24 Do you agree?

25 A Yes, all items on this page have a

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1       general hourglass shape, yes.

2           Q     Which is first disclosed in the D  
3       '906 patent?

4           MR. BERKOWITZ:  Objection to form.

5           A     The '906 did disclose an hourglass  
6       shape, yes, as part of it in its overall  
7       appearance.

8           Q     From the bottom view, can you tell  
9       me the difference between the D '723 patent  
10      and the D '906 patent?

11          A     Well, obviously, the analysis is  
12      done on the product as a whole because just  
13      looking at isolated views may be misleading.

14                However, to answer your question,  
15      when we're comparing these images, yes, we  
16      see, you know, there's a different -- you  
17      know, in this particular view, we are seeing  
18      the hourglass shape and there are a lot of  
19      similarities between product B, the '723 and  
20      the '906.

21                The wheels, as we know, are  
22      unclaimed.  They all share a fair number  
23      of -- of parts of this, this overall  
24      impression in this particular view.

25          Q     So the overall impression of the

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1 bottom view is quite similar, all three of --  
2 all three of them, the patents-in-suit, the  
3 accused product B and the '906 patent?

4 MR. BERKOWITZ: Objection to the  
5 form.

6 A In this particular view, they are  
7 fairly close, yes.

8 Q And I guess page number 4 we had  
9 looked at already. This is also a very --

10 A I'm not sure why those are so  
11 pixilated, but we're familiar with the  
12 originals at least.

13 Do you not want to look at the side  
14 views?

15 Q I'm trying to see if I can get a  
16 clear view of the side view.

17 Let me take a look at the other  
18 pattern, which may have a better view. It's  
19 right here.

20 So as shown here -- that is figure  
21 5 of the D '723 patent, which shows a side  
22 view of the claimed design.

23 Can you see that?

24 A Yes.

25 Q And where the fender covers



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1 significantly, especially the top --  
2 especially the top of the wheel.

3 Do you agree?

4 A Yes.

5 The open fender here sits on top of  
6 the wheel. The wheel is unclaimed but we  
7 know it's there and reveals the hub on the  
8 side of the wheel.

9 Q And if we take a look at the  
10 product B, as you can see, none of the wheel  
11 is covered by the fender and the side view  
12 clearly showed that the whole fender does not  
13 cover the wheel from the side view.

14 MR. BERKOWITZ: Objection to the  
15 form.

16 A That's not how -- you made a  
17 statement.

18 Is that a question?

19 Q It's a question.

20 A The fender here is also above the  
21 wheel and it does reveal the side of the  
22 wheel.

23 In this case, we see a lot more of  
24 the tread of the wheel, but of course,  
25 that's, you know, unclaimed in the patent

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1 we're looking at.

2 Q Okay.

3 A And in the '906, we only can see  
4 the hub or anything. So it's an entirely  
5 closed one, and so, you know, when we say  
6 which one is closer to each other, it's very  
7 clear that this fender on top of the wheel is  
8 revealing most of the wheel is common between  
9 the '723 and product B, and the '906 has a  
10 completely different direction.

11 Q How did you determine what is  
12 closed or what is further?

13 A Based on what we're seeing here,  
14 for instance, that the -- that we have a --  
15 what's called a fender skirt, you know, like  
16 a closed wheel, picture those cars from the  
17 '50s and '60s, they used to have that, a  
18 fender skirt, a cover over its wheels. I'm  
19 not sure why.

20 And today, we have the approach  
21 that's product B in '723, why there's a  
22 fender on cars that reveals the wheel and  
23 people like to show off their hubs and do  
24 fancy designs.

25 Product B does a good job of that

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1 as well, so I feel, in closing the wheel,  
2 like '906 does and closing the hub entirely.

3 Q Not entirely -- sorry, I'll let you  
4 finish.

5 A Correct. Not entirely.

6 We do see probably the bottom of  
7 the tread, but the way it's enclosed there  
8 gives it a whole different feel.

9 So to answer your question, you  
10 know, what makes that so different, you know,  
11 why is that further away, it's because it's  
12 giving it quite a different impression.

13 Q Let me --

14 A Because with a car with a fender  
15 skirt, it would certainly catch my eye.

16 Q I understand that.

17 Well, you mentioned the word  
18 "feel."

19 You could easily argue that an  
20 ordinary observer can have the feel that  
21 product B has a more edgy, more futuristic  
22 design, so the fender goes up, and the -- on  
23 the '906 patent, and the '723 patent has some  
24 more traditional covering of the wheel  
25 design.

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1                   How do you define the feel that an  
2                   ordinary observer feels?

3                   A     I guess the feel is -- you know,  
4                   look and feel as being the way we perceive  
5                   the object, so we look at it and we get a  
6                   certain sense of it. And we, in doing so, we  
7                   think about prior references we had to  
8                   objects like that.

9                   And I guess I was bringing up cars.

10                  I mean, it doesn't mean you have to  
11                  be car experts, but certainly if I saw a car  
12                  with covered wheels, that would stand out to  
13                  me.

14                  Whereas, the difference between  
15                  '723 and product B, if I saw those on cars,  
16                  that would not stand out to me, so I would  
17                  not have a different feel, whereas I would to  
18                  the '906.

19                  Q     So by "feel," you're referring to  
20                  the emotional perception that the ordinary  
21                  observer received from seeing the products  
22                  and then seeing the patent?

23                  A     Yeah. "Impression" is probably a  
24                  better word, but we -- I was using the terms  
25                  look and feel to describe, you know, that

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1       we're observing the design, not necessarily  
2       say an emotional attachment to the product.  
3       It's about the ornamental styling.

4           Q     Is that from your own perspective  
5       or from the perspective of the ordinary  
6       observer that you defined in your report?

7           A     It's from the perspective of the  
8       ordinary observer.

9           Q     And by feel, you're referring to  
10      the -- to your own word, the ornamental  
11      styling?

12          A     Yes. You're asking about that, and  
13      look and feel is a phrase, by itself, that's  
14      used to refer to styling as opposed to, say,  
15      functionality.

16                So I was using that to -- to help  
17      describe what we're looking at here, but  
18      obviously in my report, I use the word  
19      "impression," which is the -- the official  
20      term that we're using here.

21          Q     Is that objectively or subjectively  
22      when you're referring to the impression?

23          A     I'm doing so to represent what the  
24      ordinary observer would be looking at. So I  
25      think I'm being objective in this case.

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1 Q Okay.

2 MR. CHENG: We're almost finished.

3 Let me just -- let's just do -- I  
4 think I can wrap up everything within 30  
5 minutes. I just have a few more questions  
6 related to product E that was included here.

7 MR. BERKOWITZ: Why don't we take  
8 five or ten minutes because we've been going  
9 now about an hour and 15.

10 MR. CHENG: Sure, yeah. Let's take  
11 five or ten. I have no preference.

12 (Brief recess taken.)

13 Q Mr. Hatch, just a few more  
14 questions regarding the product E included in  
15 your expert witness report.

16 First, why did you include  
17 Exhibit -- why did you include product E, the  
18 Gyroor product E in your report?

19 MR. BERKOWITZ: Objection to the  
20 form.

21 A Well, I believe it -- it also  
22 infringes on the patent.

23 Q How did you know that ink  
24 fringed -- how did you know about this  
25 product?

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1           A     The -- the attorneys informed me  
2     about product E and asked me to analyze it.

3           Q     When did they inform you about  
4     product E?

5           A     I'm not sure. Obviously, some time  
6     before I wrote the document up.

7                     Let me pull up the exhibit here.

8                     Yeah, I'm not sure exactly of the  
9     timing because product E was a later analysis  
10    that I did and I got ahold of the product  
11    itself, the sample, and looked at it and then  
12    added it to my infringement report.

13          Q     Was product E -- was product E  
14    included -- I'll ask was the analysis of  
15    product E included in your prior reports?

16          A     I -- I'm just trying to recall.

17                     I think -- let me see.

18                     You sent in Exhibit 1, is it -- I  
19    think it might have been in the 2021, if I  
20    can check.

21          Q     Oh, take your time. You can check  
22    it.

23          A     Okay, thank you.

24                     I don't want to misstate that,  
25    because I know it came later.

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1 Q Of course.

2 A I'm just not sure of the timing.

3 Yes. So I think it was -- I think  
4 it came -- I included it for the first time  
5 in my first infringement report of 2022.

6 Q Can you tell me the date for the  
7 2022 report?

8 A I believe that's Exhibit 3, and  
9 what date, I think the date is -- it's  
10 August, possibly August the 15th I think it  
11 was filed.

12 Q And is there any reason that was  
13 not included in your prior reports?

14 MR. BERKOWITZ: Objection to the  
15 form.

16 A I was not aware of it in prior  
17 reports that it wasn't included in. So as  
18 soon as my attention was brought towards it,  
19 I analyzed it and included it in my  
20 infringement report.

21 Q And I'm looking at the Exhibit No.  
22 6, which is dated August 24, 2021.

23 Can you take a look at that,  
24 Exhibit No. 6?

25 A Yes.



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1           Q     Can you confirm that product E is  
2     not included in this report?

3                   MR. BERKOWITZ:  Objection to the  
4     form.

5           A     It -- it's -- there are no images  
6     of Gyroor product E included in Exhibit 6.

7           Q     Did you know about product E when  
8     you submitted this report?

9                   MR. BERKOWITZ:  Objection to form.  
10    Asked and answered.

11          A     I don't think I was aware of it as  
12    a -- as a separate product of Gyroor's at  
13    that time.

14          Q     Okay.

15                   MR. CHENG:  I have no further  
16    questions.

17                   Thank you.

18                   MR. BERKOWITZ:  Okay.  I have no  
19    questions for the witness.

20                   MR. CHENG:  Great.

21                   And thank you, Mr. Hatch, so much  
22    for attending the deposition today.  I know  
23    it took a while.

24                   And I thank you, Ms. Reporter, for  
25    helping us with this process.

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1 (Whereupon, the deposition was

2 concluded at 3:10 p.m.)

3 (Witness was excused.)

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C E R T I F I C A T E

I, CHARLENE FRIEDMAN, a Certified Court Reporter and Notary Public, qualified in and for the State of New Jersey do hereby certify that prior to the commencement of the examination PAUL HATCH was duly sworn by me to testify to the truth the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER certify that I am neither a relative of nor employee nor attorney nor counsel for any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



CHARLENE FRIEDMAN, RPR, CRR, CCR of the  
State of New Jersey  
License No: 30XI00204900  
Date: October 21, 2022

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1	LAWYER'S NOTES		
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DEPOSITION ERRATA SHEET

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of  
my Deposition taken in the captioned matter  
or the same has been read to me, and  
the same is true and accurate, save and  
except for changes and/or corrections, if  
any, as indicated by me on the DEPOSITION  
ERRATA SHEET hereof, with the understanding  
that I offer these changes as if still under  
oath.

Signed on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_

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